balance of the proposed merger, including the prospects for mitigating the potential public interest harms that we identify above.

249. In the paragraphs below, we summarize the conditions and describe changes thereto made a result of commenters' suggestions. We also note where changes were not made, despite commenters' concerns. Subsequently, we describe the benefits of the conditions. We explain why we adopt the group of conditions as modified in their entirety and approve the merger subject to those conditions. Finally, we discuss why we agree with the Applicants that additional commitments beyond those proffered by the Applicants are not warranted.

250. We adopt, with some modification, the proffered commitments of Bell Atlantic and GTE as express conditions of our approval of the transfer of licenses and lines from GTE to Bell Atlantic.[563] For the reasons set forth below, we conclude that, assuming the Applicants' ongoing compliance with these conditions, Bell Atlantic and GTE have demonstrated that their proposed transaction, on balance, will serve the public interest, convenience and necessity.

251. As indicated below, these conditions are designed to accomplish five primary public interest goals: (a) promoting equitable and efficient advanced services deployment; (b) ensuring open local markets; (c) fostering out-of-territory competition; (d) improving residential phone service; and (e) ensuring compliance with and enforcement of the conditions. These goals flow from our statutory objectives to open all telecommunications markets to competition, to promote rapid deployment of advanced services, and to ensure that the public has access to efficient, high-quality telecommunications services. Achieving these goals will also serve to ameliorate the potential public interest harms of the transaction described above.

252. Even though some of the conditions may relate to other requirements that Bell Atlantic and GTE are or will be subject to under the Act or our rules, the conditions that we adopt in this merger proceeding are not intended to prejudge, or override, Commission action in other proceedings. The Commission may, for example, adopt additional requirements in other more general proceedings that affect matters addressed by these conditions. In that case, because the conditions are intended to be a floor and not a ceiling,[564] the merged firm would be subject to the general requirements as well as these conditions. We emphasize that the merged firm must comply with any applicable Commission orders or rules in addition to the requirements of these

[563] The specific conditions that we adopt in this merger proceeding are set forth in Appendix D to this Order. In order to provide guidance to the industry on particular interpretive issues, as well as to facilitate implementation and enforcement of the conditions, in some instances we have annotated the Applicants' proffered conditions with explanatory footnotes that further reflect and clarify the intent of the particular condition.

[564] *See SBC/Ameritech Order*, 14 FCC Rcd at 14857, para. 356. *See also* AT&T Mar. 1, 2000 Opposition at 35; Covad Mar. 1, 2000 Comments at 11-12 (conditions should supersede less stringent state certification requirements on the merged entity's separate advanced services affiliate); MCI WorldCom Mar. 1, 2000 Supplemental Comments at 8.

conditions.[565]

253. Nor are the conditions that we adopt today intended to be considered as an interpretation of sections of the Communications Act, especially sections 251, 252, 271 and 272, or the Commission's rules, or any other federal statute including the antitrust laws.[566] The conditions are designed to address potential public interest harms specific to the merger of the Applicants, not the general obligations of incumbent LECs or the criteria for BOC entry into the interLATA services market. For example, the Carrier-to-Carrier Performance Plan is not meant to substitute for any enforcement mechanisms that the Commission may adopt in the section 271 context (*i.e.*, anti-backsliding measures), nor substitute for state performance measure plans. All of the conditions that we adopt today are merger-specific and not determinative of the obligations imposed by the Act or our rules on Bell Atlantic, GTE or any other telecommunications carrier. In particular, we note that our adoption of Bell Atlantic/GTE's proposed conditions does not signify that, by complying with these conditions, Bell Atlantic/GTE will satisfy its nondiscrimination obligations under the Act or Commission rules.

254. The conditions are also not intended to limit the authority of state commissions to impose or enforce requirements that go beyond those adopted in this Order.[567] Because these conditions serve as a baseline, the Applicants must abide by any applicable state rules, even if those rules address matters that are included within these conditions, unless the merged entity would violate one of these conditions by following the state rule. We do not preclude states from imposing additional rules, regulations, programs or policies that are not inconsistent with these conditions. As discussed below, however, to the extent that a requirement in these conditions duplicates a requirement imposed by a state pursuant to its review of the proposed merger, parties can elect to receive the benefit under either these conditions or the identical state conditions.

255. The conditions we adopt today will remain effective and enforceable for 36 months, unless otherwise specified in the relevant condition. Accordingly, for conditions that take effect a certain period of time after the merger closing, Bell Atlantic/GTE's obligations under those conditions would extend from their effective date for a full 36-month period of benefit, which would fall later than 36 months after the merger closing.

256. We expect that Bell Atlantic/GTE will implement each of these conditions in full, in good faith and in a reasonable manner to ensure that all telecommunications carriers and the public are able to obtain the full benefits of these conditions. If Bell Atlantic/GTE does not

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[565] If Bell Atlantic/GTE is unable to comply simultaneously with both the requirements of any condition and the requirements of any Commission rule or order, it must so inform the Commission and seek guidance as to how it should proceed.

[566] *See SBC/Ameritech Order*, 14 FCC Rcd at 14857, para. 357. *See also* MCI WorldCom Mar. 1, 2000 Supplemental Comments at 8.

[567] *See SBC/Ameritech Order*, 14 FCC Rcd at 14857, para. 358. *See also* MCI WorldCom Mar. 1, 2000 Supplemental Comments at 8.

fulfill its obligation to perform each of the conditions, pursuant to our public interest mandate under the Communications Act we must take action to ensure that the merger remains beneficial to the public. We intend to utilize every available enforcement mechanism, including, if necessary, revocation of the merged firm's section 214 authority,[568] to ensure compliance with these conditions. To this end, should the merged entity systematically fail to meet its obligations, we can and will revoke relevant licenses, or require the divestiture of Bell Atlantic/GTE into the current Bell Atlantic and GTE companies.[569] Although such action would clearly be a last resort, it is one that would have to be taken if there is no other means for ensuring that the merger, on balance, benefits the public.

257. As the Commission previously has stated in the context of approving mergers between major incumbent LECs, our approval of this Application subject to conditions should not be considered as an indication that future applicants always will be able to rely on similar public interest commitments to offset potential public interest harms.[570] Each case will present different facts and circumstances. Though the *SBC/Ameritech Conditions* provided a framework for the conditions that we adopt here, as we discuss above, our review of the merits of the commitments that Bell Atlantic and GTE proffer is limited to the context of the potential harms and benefits that are particular to this proposed merger.

258. The Commission also previously has expressed concern regarding consolidation among the major incumbent LECs, and how such consolidation could gravely impair our implementation of Congress's directive to open all telecommunications markets to competition.[571] Indeed, we conclude above that a merger between Bell Atlantic and GTE presents serious potential for public interest harms arising out of the loss of a significant benchmark, greater incentive and ability for the companies to discriminate against competitors as a merged entity, and the loss of a prospective competitor in each other's markets.[572] In the *SBC/Ameritech Order*, we held that "[t]he instant transaction, approved with a stringent set of conditions, removes yet another independent major incumbent LEC, thereby further escalating the burden on any future major incumbent LEC merger applicants" in establishing that a proposed merger will, on balance, be pro-competitive and therefore serve the public interest, convenience and

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[568] *See CCN, Inc., et al.*, CC Docket No. 97-144, Order, 13 FCC Rcd 13599 (1998) (revoking the Fletcher Companies' section 214 operating authority for slamming and other violations of the Communications Act and Commission rules).

[569] *Cf. SBC/Ameritech Order*, 14 FCC Rcd at 14858, para. 360 (granting section 214 application of SBC to acquire Ameritech subject to conditions, but stating that the Commission "can and will" revoke relevant licenses or require divestiture should the merged entity fail to meet its obligation to perform each of the conditions).

[570] *See id.* at 14858, para. 361; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19993, para. 15.

[571] *See, e.g., SBC/Ameritech Order,* 14 FCC Rcd at 14858-59, para. 362; *Bell Atlantic/NYNEX Order*, 12 FCC Rcd at 19994, para. 16.

[572] *See. e.g.*, CompTel Mar. 1, 2000 Comments at 2 (conditions are necessary "to increase competitive opportunities in order to offset the loss of potential competition resulting from the merger").

necessity.[573] Likewise, the burden on any major incumbent LEC merger applicants subsequent to today will be even greater.

259. With respect to the burdens on the applicants for the instant merger, though GTE is not a BOC, we are mindful that it is a major incumbent LEC.[574] Compounding the loss of a key benchmark through merging with Bell Atlantic, another major incumbent LEC, is the fact that as a non-BOC, GTE is not subject to section 271. Thus, GTE does not have the same incentive as a BOC of gaining authorization to offer in-region, interLATA voice and data services in exchange for its demonstration that the local telecommunications market in the particular state is open to competition. Furthermore, several commenters express concern regarding the actual performance of GTE, in particular, in numerous areas of the realm of opening telecommunications markets to competition.[575] Accordingly, some of these commenters argue that conditions to the instant merger should be especially strong with respect to the operation of the merged entity in GTE legacy service areas.[576] In this regard, we have looked to the Applicants to offer commitments that would compel or reflect greater results on the part of GTE in opening its markets to competition.[577] Without the bolstering of these commitments particularly with respect to GTE, we would be hard-pressed to find that the Applicants meet their already-escalated burden of establishing that the benefits of the merger will outweigh the harms.

1. Promoting Equitable and Efficient Advanced Services Deployment

260. *Separate Affiliate for Advanced Services.* Under this condition, Bell Atlantic and GTE will create, prior to closing the merger, one or more separate affiliates to provide all advanced services in the combined Bell Atlantic/GTE[578] region on a phased-in basis. The structural and non-structural safeguards we adopt today will make engaging in anticompetitive misconduct more difficult.[579] In addition, the separate affiliate condition will counterbalance Bell Atlantic/GTE's increased incentive to degrade services and facilities furnished to competitors by

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[573] 14 FCC Rcd at 14859, para. 362.

[574] *See SBC/SNET Order*, 13 FCC Rcd at 21302, para. 21.

[575] *See, e.g.*, NEXTLINK Mar. 16, 2000 Reply at 16-18; Allegiance Mar. 1, 2000 Comments at 2; BlueStar et al. Mar. 1, 2000 Comments at 16-18; CoreComm Mar. 1, 2000 Comments at 41.

[576] *See* Allegiance Mar. 1, 2000 Comments at 2; AT&T Mar. 1, 2000 Opposition at 27-28 (so as to offset the harms from lost benchmarks); CoreComm Mar. 1, 2000 Comments at 25-26 (so as to offset the lack of a section 271 inducement with respect to GTE); NEXTLINK Mar. 16, 2000 Reply at 10.

[577] *See, e.g., infra* paras. 296-99.

[578] We use the term "Bell Atlantic/GTE" to represent the entity that will result from the merger, consisting of today's Bell Atlantic Corporation, GTE Corporation, and each company's incumbent LEC telephone subsidiaries.

[579] For example, the requirement to have separate officers, directors, and employees, as well as the requirements to operate independently and to deal at arm's length, will deter a Bell Atlantic/GTE incumbent LEC and its separate affiliate from coordinating activities to discriminate against competitors.

making such behavior readily apparent to the Commission and the public.[580] We therefore expect that strict compliance with the separate affiliate condition will mitigate the substantial risk of discrimination faced by Bell Atlantic/GTE's competitors after the merger.

261. Establishing an advanced services separate affiliate will provide a structural mechanism to ensure that competing providers of advanced services receive effective, nondiscriminatory access to the facilities and services of the merged firm's incumbent LECs that are necessary to provide advanced services. Because the merged firm's own separate affiliate will use the same processes as competitors, wait in line for collocation space, buy the same inputs used to provide advanced services, and pay an equivalent price for facilities and services, the condition should ensure a level playing field between Bell Atlantic/GTE and its advanced services competitors.[581] In this regard, the competitive safeguards will provide Bell Atlantic/GTE's competitors substantial benefits. For example, to the extent a Bell Atlantic/GTE incumbent LEC allows its separate affiliate to collocate packet switches, routers, or other equipment, the nondiscrimination safeguards compel the incumbent LEC to allow unaffiliated carriers to collocate similar equipment on nondiscriminatory rates, terms, and conditions. Similarly, if a Bell Atlantic/GTE incumbent LEC works with its separate affiliate to develop new systems, products, or company-wide standards, it must cooperate with unaffiliated carriers in the same way.[582]

262. We expect that Bell Atlantic/GTE's competitors will benefit from the incumbent's incentive to assist its affiliate because the nondiscrimination safeguards and the rigorous audit requirements will ensure that they receive the same treatment as the separate affiliate. Because Bell Atlantic/GTE's Advanced Services Affiliate will have to order line sharing arrangements like any other advanced services provider, competitive LECs can expect Bell Atlantic/GTE's incumbent LECs to develop improvements and import best practices to make this ordering

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[580] For example, the separate affiliate's section 272(b)(5) disclosure requirements will ensure that all dealings between the Bell Atlantic/GTE incumbent LECs and their separate affiliates will occur at arm's length and in the public eye. The relevant disclosure requirements will provide competitors the information needed to resolve disputes. *See Non-Accounting Safeguards Order*, 11 FCC Rcd at 22021, para. 243. Moreover, we note that the Applicants' modified their proposal to allow the public access to data showing the performance BA/GTE's incumbent LECs provide to their Advanced Services Affiliate. *See infra* Appendix D at para. 9 (specifying that performance measurements regarding the separate affiliate shall be made available to other parties); *see also* MCI WorldCom Mar. 1, 2000 Comments at 8 (advocating stricter reporting requirements). In addition, we note that the rigorous audit requirements that apply to Bell Atlantic/GTE will further increase the probability of detecting discriminatory practices.

[581] *See* Advanced Telecom Mar. 1, 2000 Comments at 7-9 (addressing equal treatment for collocation of DSLAMs in remote terminals); Covad Mar. 1, 2000 Comments at 7-8; *see also SBC/Ameritech Order*, 14 FCC Rcd at 14859, n.674 (summarizing the collocation benefits arising out of the separate affiliate nondiscrimination safeguards).

[582] *See* Advanced Telecom Mar. 1, 2000 Comments at 9-10 (addressing risk of incumbent LEC and affiliate collaborating to develop a network that limited competitive access); Comptel Mar. 1, 2000 Comments at 8-9 (pointing out that competitors can opt into portions of the interconnection agreement between BA/GTE incumbent LECs and their Advanced Services Affiliate); *see also Non-Accounting Safeguards Order*, 11 FCC Rcd at 22003, para. 210 (finding that the section 272(c) nondiscrimination safeguards obligate the BOC "to work with competitors to develop new services if it cooperates in such a manner with its section 272 affiliate) & 22013, para. 229.

process as simple as possible. Given this expectation, we anticipate that this condition will greatly accelerate competition in the advanced services market by lowering the costs and risks of entry and reducing uncertainty, while prodding all carriers, including the Applicants, to hasten deployment.[583] Consumers will ultimately benefit from this deregulated approach.

263. The separate advanced services affiliate will be distinct from Bell Atlantic/GTE's in-region telephone companies and operate largely in accordance with the structural, transactional, and nondiscrimination requirements of sections 272(b), (c), (e), and (g).[584] The condition specifies certain activities that will be permitted between the Bell Atlantic/GTE incumbent LEC and the separate affiliate, some of which differ from section 272's requirements.[585] Specifically, the Bell Atlantic/GTE incumbent LEC and its advanced services affiliate may jointly market the other's services and perform certain customer care services.[586] In addition, the incumbent may perform certain operation, installation, and maintenance (OI&M) functions,[587] pursuant to a tariff, written affiliate agreement,[588] or approved interconnection

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[583] *See SBC/Ameritech Order*, 14 FCC Rcd at 14859-60, para. 363.

[584] 47 U.S.C. § 272(b), (c), (e), and (g); *see also Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order On Reconsideration, FCC 00-9 (rel. Jan. 18, 2000); *Non-Accounting Safeguards Order*, *petition for review pending sub nom. SBC Communications v. FCC*, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997), First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), *aff'd sub nom. Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), *Third Order on Reconsideration*, FCC 99-242 (rel. Oct. 4, 1999) (*Third Order on Reconsideration*); *but see* Covad Mar. 1, 2000 Comments at 7-14 (arguing that the Applicants' proposal does not adequately incorporate all section 272 safeguards).

[585] *See* Conditions at paras. 3-4. As CompTel points out, the conditions prohibit joint ownership of advanced services equipment. Comptel Mar. 1, 2000 Comments at 9. Starting 30 days after the merger closing date, BA/GTE's incumbent LECs may no longer buy new advanced services equipment. Under certain conditions, BA/GTE incumbent LECs may continue to own and operate advanced services equipment bought and installed prior to that date. *See* Conditions at para. 4(n).

[586] The customer care services permitted under the condition on an exclusive basis are: (1) ongoing customer notification of service order progress; (2) response to a customer's inquiry regarding the status of an order; (3) changes to customer account information; and (4) receipt of customer complaints (other than receipt and isolation of trouble reports).

[587] The OI&M functions subject to these conditions encompass the deployment and operation of a facilities-based telecommunications network. Many competitive carriers contract with third parties for some or all of these functions, and the conditions permit the Bell Atlantic/GTE separate affiliate to contract with the Bell Atlantic/GTE incumbent LEC for such functions, provided that the incumbent acts in a nondiscriminatory fashion. The OI&M activities performed by an incumbent LEC in the normal course of providing unbundled elements, services or interconnection are not subject to these conditions. Such normal OI&M activities will not be affected by the conditions and will be provided and priced in accordance with forward-looking rules applicable to the underlying service, unbundled element or interconnection.

[588] We note that, in accordance with the Commission's accounting safeguards, any transactions or shared services performed pursuant to this written affiliate agreement must be valued in accordance with the affiliate transactions (continued....)

agreement, and provide billing and collection services,[589] pursuant to a written agreement, for its separate affiliate on a nondiscriminatory basis. The incumbent LEC may also transfer to the separate affiliate specified advanced services equipment[590] on an exclusive basis during a limited grace period. Starting 90 days after the merger closing, all new advanced services equipment must be purchased and owned by the separate affiliate.[591] The affiliate may also use the Bell Atlantic/GTE incumbent LEC's name, trademarks or service marks on an exclusive basis, and employees of the separate affiliate may be located in the same buildings and on the same floors as the incumbent LEC's employees.[592] Moreover, although Bell Atlantic/GTE will comply with

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rules, reduced to writing and posted on the Internet, and made available to competitors on the same rates, terms and conditions. *See Non-Accounting Safeguards Order*, 11 FCC Rcd at 21992, para. 181.

[589] The billing and collection services that the incumbent is permitted to provide on a nondiscriminatory basis include payment arrangements, account adjustment, responding to account balance inquiries, account closure, responses to legal action affecting or involving the customer, and receipt and resolution of customer billing and collection complaints. Bell Atlantic/GTE may, for example, include the affiliate's and other carriers' bills on a separate page in the same envelope with its bill, or it may choose to place the affiliate's and other carriers' bills in a separate envelope. Either way, Bell Atlantic/GTE must offer the same services that it provides to its affiliate to unaffiliated carriers at the same rates, terms and conditions, and on a disaggregated basis that permits the unaffiliated providers to select the particular services that they desire from the incumbent.

[590] For purposes of this condition, the equipment that may be transferred consists of: (1) DSLAMs or functionally equivalent equipment; (2) spectrum splitters that are solely used in the provision of advanced services; (3) packet switches and multiplexers such as ATMs and frame relay engines used to provide advanced services; (4) modems used in the provision of packetized data; and (5) DACS frames used only in the provision of advanced services. Spectrum splitters used to separate the voice-grade channel from the advanced services channel are not permitted to be transferred. Such asset transfers must take place in accordance with the Commission's accounting safeguards. Consistent with the Commission's rules, if Bell Atlantic/GTE transfers to its separate advanced services affiliate a facility (e.g., copper loops, dark fiber, switching equipment) that is deemed to be an unbundled network element under 47 U.S.C. § 251(c)(3), the Commission's unbundling requirements will attach with respect to that element. *See* 47 C.F.R. § 53.207.

[591] This prohibition against joint ownership, as per the section 272(b)(1) non-accounting safeguards, is critical for ensuring that the Bell Atlantic/GTE incumbent LECs do not circumvent the nondiscrimination safeguards and that ratepayers of regulated services do not bear the costs of Bell Atlantic/GTE's competitive operations. *See* Comptel Mar. 1, 2000 Comments at 9. Under certain conditions, BA/GTE incumbent LECs may continue to own and operate advanced services equipment bought and installed prior to the 90 day deadline. *See* Conditions at para. 4(n).

With respect to ownership of new advanced services equipment, we note that several parties raise concerns about competitive access to the BA/GTE incumbent LEC remote terminals. *See, e.g.*, Letter from Patrick J. Donovan, Counsel for Mpower Communications Corporation, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 98-184 (filed June 6, 2000); Advanced Telecom Mar. 1, 2000 Comments at 7-10; CompTel Mar. 1, 2000 Comments at 5. These concerns stem from similar issues arising in the context of the *SBC/Ameritech Conditions*, as well as a previous description of the Applicants' proposal. *See* Bell Atlantic/GTE May 19, 2000 *Ex Parte* Letter, Attach. at para. 3d(1); *Common Carrier Bureau Seeks Comment on SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions*, Public Notice, DA 00-335 (rel. Feb. 18, 2000). To address these concerns, the Applicants modified their proposal to state that they will comply with the Commission's resolution of this issue in the proceeding related to SBC. *See* Conditions at para. 3d.

the Commission's section 272 accounting safeguards,[593] it will be permitted to deviate from these only to the extent that it will not have to comply with the Commission's transaction disclosure requirements under section 272(b)(5) with respect to transactions conducted pursuant to interconnection agreements between a Bell Atlantic/GTE incumbent LEC and its advanced services affiliate. To ensure that all transactions between the advanced services affiliate and the incumbent are conducted on an arms-length basis, Bell Atlantic/GTE's compliance with this separate affiliate condition will be subject to an annual audit.

264. After a limited transition period, the responsibility to provide advanced services in the Bell Atlantic/GTE service area will rest with the separate affiliate, and the activities that it and the incumbent may undertake are specifically set forth in the conditions.[594] Once the separate affiliate is operating in accordance with the "Steady-State Provisioning" requirements, it will be operating just like any other unaffiliated provider of advanced services. To ease the transition to providing all advanced services through a separate affiliate, the conditions permit a Bell Atlantic/GTE incumbent LEC to perform certain activities on behalf of its affiliate on an exclusive basis during the transition period. Specifically, for a limited period, a Bell Atlantic/GTE incumbent LEC may provide limited "network planning, engineering, design or assignment"[595] services associated with advanced services to its affiliate, and receive and isolate troubles affecting an advanced services customer on behalf of the affiliate. We emphasize that the transition period is extremely limited with clear deadlines, and the services that a Bell Atlantic/GTE incumbent LEC may perform for its separate affiliate are a narrow set of services that may not subsume the main function of the affiliate. We recognize that the transition period differs from the one adopted in the *SBC/Ameritech Order* in that Bell Atlantic/GTE could receive up to 60 additional days.[596] We find, however, that if the transition is not managed properly, existing advanced services customers could experience uncalled-for disruption of service. We

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[592] The Commission's nondiscrimination and accounting safeguards will continue to apply in these circumstances in order to protect competition from potential abuse.

[593] *See Accounting Safeguards Order*, 11 FCC Rcd at 17588-618, 17652-55, paras. 111-70, 251-58.

[594] To ensure Bell Atlantic/GTE implements its separate affiliate in a timely manner, the conditions establish a deployment schedule for interstate and intrastate advanced services. The deployment schedule varies depending on the type of customer, i.e., a new activation or an embedded customer. *See* Conditions at paras. 5-6. As a general matter, we expect Bell Atlantic/GTE to start providing interstate advanced services through the separate affiliate as quickly as possible, even though the separate affiliate may continue to outsource a number of functions during the transition period. *See id.* at para. 5(a) (requiring the incumbent LECs and the separate affiliate to operate pursuant to an interconnection agreement for interstate services within 90 days of filing such agreement with a state commission). The Bell Atlantic/GTE separate affiliate will be fully operational once it is acting in accordance with the "Steady-State Provisioning" requirements and after all transition periods have ended. *See id.* at para. 4.

[595] By "network planning, engineering, design, and assignment services," we mean those functions described in subparagraphs 4(a), 4(c), and 4(d). Such activities are to be narrowly construed and do not include, for example, ordering any services or facilities. *See* Conditions at para. 4(f), 6(g)(3). All permissible forms of "network planning, engineering, design, and assignment" services, for example, end no later than 180 days after the merger closing date.

[596] *See SBC/Ameritech Conditions*, 14 FCC Rcd at 14983, 14984-86, paras. 5(a), 6.

note, nevertheless, that competitors will benefit immediately from the separate affiliate conditions because of the "functional equivalent" requirements, which ensure that Bell Atlantic/GTE will start to operate in a manner functionally equivalent to a fully operational separate affiliate immediately after merger closing.[597]

265. Bell Atlantic/GTE's obligation to provide all advanced services through a separate affiliate will sunset after either: (a) the later of 42 months after the merger's closing, or 36 months after the incumbent ceases to process trouble reports for the affiliate on an exclusive basis; (b) the date on which Congress has enacted legislation that specifically prohibits the Commission from requiring an incumbent LEC to establish a separate advanced services affiliate and the Commission has modified its rules and regulations in a manner that would materially alter the structure or interaction between the incumbent and affiliate from that set forth in the conditions;[598] or (c) nine months after a final, non-appealable judicial decision determines that the separate advanced services affiliate is deemed a successor or assign of the incumbent, unless that decision is based substantially on conduct by or between a Bell Atlantic/GTE incumbent and its affiliate that was not expressly permitted by these conditions.

266. If, after one of these three sunset events occurs, Bell Atlantic/GTE decides to no longer provide advanced services through a separate affiliate in a particular state, then Bell Atlantic/GTE will continue certain other obligations until 48 months after the merger closing date. In that case, Bell Atlantic/GTE must, for example, provide all advanced services through a separate office or division that will continue using the same OSS interfaces, processes and procedures that are made available to unaffiliated entities (including using the Electronic Data Interchange (EDI) interface for processing a substantial majority of pre-order inquiries and orders).[599] In addition, Bell Atlantic/GTE will continue the surrogate line-sharing and advanced services OSS discounts, and its incumbent LECs will continue to provide unaffiliated carriers with the same OI&M services that its retail operations use, as well as those OI&M services that previously were made available under the conditions.

267. As in the *SBC/Ameritech Order*, we find, on the basis of the conditions as written, that the affiliate structure creates a rebuttable presumption that a Bell Atlantic/GTE advanced

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[597] *See* Conditions at para. 6(g) (establishing the functional equivalent requirements as the minimum operating standard). We further note that the functional equivalent requirements guard against potential delays in the implementation of Bell Atlantic/GTE's separate affiliate. Under the functional equivalent requirements, the separate affiliate must order all "facilities and/or services" used to provide advanced services, which will trigger immediately the Bell Atlantic/GTE incumbent LECs' incentive to improve their processes and systems. Consistent with the scheme laid out in *SBC/Ameritech Order*, however, the functional equivalent requirements also allow the Bell Atlantic/GTE incumbent LECs to process orders for ADSL service and order the necessary facilities until the Steady-State Provisioning requirements go into effect. *See* Conditions at para. 6(g)(2)-(4).

[598] Examples of such a material change would be if the Commission prohibits an incumbent LEC from providing joint marketing or operation, installation and maintenance services to an advanced services affiliate. *See SBC/Ameritech Order*, 14 FCC Rcd at 14862 n.685.

[599] The separate office or division will, for example, wait in line for collocation space like unaffiliated carriers. In this way, unaffiliated parties will continue to receive the benefits of the separate affiliate condition.

services affiliate will not be a "successor or assign" of an incumbent LEC under section 251(h)(1) or a BOC under section 3(4)(B) of the Act.[600] At the same time, however, we note that if a Bell Atlantic/GTE incumbent LEC and its advanced services affiliate behave in a manner inconsistent with the intent of the conditions or engage in activities beyond those expressly permitted in the conditions, the company bears the risk that the affiliate will be deemed a successor or assign of the incumbent LEC and, therefore, subject to incumbent LEC regulation under section 251(c). Accordingly, if a Bell Atlantic/GTE advanced services affiliate is found to be a successor or assign[601] based on activities that are expressly permitted in these conditions, then, nine months after such a finding becomes final and non-appealable, Bell Atlantic/GTE will no longer be obligated under the conditions to provide all advanced services through a separate affiliate, although it may choose to do so, but will continue to bear certain obligations.[602] If, however, the separate advanced services affiliate is deemed to be a successor or assign based substantially on conduct by or between a Bell Atlantic/GTE incumbent and its affiliate that was not expressly permitted by these conditions, then Bell Atlantic/GTE shall continue providing advanced services through the affiliate, operating as a successor or assign, for the full duration of the condition.[603]

268. We reject AT&T's argument that the separate advanced services affiliate created under these conditions necessarily will be a "successor or assign" of Bell Atlantic/GTE incumbent LECs and thereby subject to incumbent LEC regulation under section 251(c).[604] In the *SBC/Ameritech Order*, we addressed these same issues as raised by the commenters there relative to the separate advanced services affiliate conditions that we applied to the combined SBC/Ameritech entity. Significantly, we note the separate affiliate conditions in the instant merger and those that we adopted in the SBC/Ameritech merger are identical in all relevant respects.[605] Thus, our analysis in rejecting the assertion that the SBC/Ameritech separate

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[600] 47 U.S.C. §§ 251(h)(1) & 153(4)(B). *See SBC/Ameritech Order*, 14 FCC Rcd at 14893, para. 445.

[601] We do not address in this proceeding the potential obligations or requirements with respect to third parties that may be imposed on Bell Atlantic/GTE in the event that its advanced services affiliate is found to be a successor or assign.

[602] *Id.* We note that, after that time, if Bell Atlantic/GTE decides to no longer provide advanced services through a separate affiliate in a particular state, it will provide them through a separate division that will comply with certain obligations until 48 months after the merger closing date. *See* Conditions at para. 12.

[603] *See* Conditions at para. 11c.

[604] 47 U.S.C. § 251(c). *But see* AT&T May 5, 2000 Comments at 8-15.

[605] *Compare SBC/Ameritech Conditions*, 14 FCC Rcd at 14969-90, paras. 1-13 (SBC/Ameritech separate advanced services affiliate conditions) *with* Conditions at paras. 1-12 (Bell Atlantic/GTE separate advanced services affiliate conditions). In the *SBC/Ameritech Order*, we concluded that, in determining whether an advanced services affiliate is a successor or assign of an incumbent LEC, we must consider whether "substantial continuity" exists between the incumbent LEC and the affiliate. We identified four indicia of a lack of substantial continuity between an incumbent and its advanced services affiliate; specifically, whether: (1) there is identifiable physical separation between the entities; (2) the incumbent LEC has not transferred to its affiliate substantial assets or assets that are necessary for the continuation of the incumbent's traditional business operations; (3) transactions between the (continued....)

advanced services affiliate is a successor or assign of an SBC/Ameritech incumbent LEC applies equally here. We hereby incorporate that analysis by reference.[606]

269. We find that, as a general matter, incumbent LECs have no market power in the advanced services market independent of their bottleneck control of those facilities, such as local loops, that are necessary to provide such services.[607] As described above, however, we find that, as a result of the merger, the combined entity will have an increased incentive and ability to discriminate against other providers of advanced services.[608] In view of this finding, we conclude that the merged entity has the ability to leverage its control over existing bottleneck facilities to gain market power in the advanced services market.

270. We find that by requiring the merged entity to provide advanced services through a separate affiliate, there is less likelihood that it will use its local market power to gain a competitive advantage in the advanced services market. Specifically, we believe that the merged entity's incentive to engage in such discrimination will be significantly curtailed by the possibility of detection. For example, the affiliate transaction rules and other transactional safeguards will ensure that all interaction between the incumbent LEC and separate affiliate is conducted on an arms-length basis and that any cross-subsidization is apparent. Similarly, to the extent the merged entity attempts to provide competitors inferior services or facilities than those which it furnishes to its affiliate, such discrimination would be detected by the reporting and performance requirements we adopt today.

271. The separate affiliate, because it does not control any bottleneck facilities,[609] does not have the potential to leverage existing market power from one market into another. Specifically, the separate advanced services affiliate is operating on a level-playing field with all other advanced services competitors, of which there are many. As a new entrant in a nascent market, it lacks both the incentive and ability to discriminate against its competitors. It lacks the incentive and ability because, unlike the incumbent, it does not control any of the bottleneck inputs that are necessary for the provision of advanced services. Accordingly, we find it reasonable to conclude that the separate affiliate will not occupy a market position comparable to that of the incumbent LEC in the provision of advanced services and, therefore, should not be considered a successor or assign of the incumbent LEC.

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incumbent and affiliate are conducted at arms-length and are transparent; and (4) the affiliate does not derive unfair advantage from the incumbent. *SBC/Ameritech Order*, 14 FCC Rcd at 14899, para. 457 (citations omitted).

[606] *See SBC/Ameritech Order*, 14 FCC Rcd at 14893-909, paras. 444-76.

[607] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, CC Docket No. 98-146, Report, 14 FCC Rcd 2398, 2423, para. 48 (1999).

[608] *See supra* Section VI.D.

[609] We note that Bell Atlantic/GTE will not be transferring any network facilities that the Commission has found to be unbundled network elements to the separate affiliate. Rather, any facilities that will be transferred are those which the Commission has explicitly declined to unbundle. Of course, to the extent the incumbent LEC transfers a DSLAM in a remote terminal in which there is no collocation space, the separate affiliate will be considered to be a successor or assign with respect to this element. *See* 47 C.F.R. § 53.207.

272. By requiring Bell Atlantic/GTE to provide all of its advanced services through a separate affiliate, we are not permitting the incumbent to avoid any of its statutory obligations. For example, the incumbent is still subject to all of the obligations of section 251(c) for the services and facilities that the incumbent actually provides. The Eighth Circuit has stated, however, that section 251(c) does not require an incumbent to offer a particular service or a particular type of network element to competitors in the first instance, if the incumbent is not providing that service or element in connection with its own operations.[610] Thus, although under the separate affiliate condition the incumbent will no longer be providing advanced services subject to the discounted resale obligation of section 251(c)(4), that is not because the incumbent is being relieved of the requirements of section 251(c)(4), but because the incumbent will no longer be offering advanced services on a retail basis.[611] Moreover, as discussed above, because the separate advanced service affiliate does not raise the competitive concerns regarding the leveraging of market power with respect to advanced services that would exist if the incumbent continued to provide those advanced services on an integrated basis, the affiliate does not simply step into the shoes of the incumbent in providing such services so as to become a "successor or assign" of the incumbent. Rather, just as a BOC affiliate under section 272 would offer long-distance services (as a non-incumbent) free of the obligations of section 251(c)(4), the advanced services affiliate should be allowed to offer advanced services free of such obligations.

273. *Surrogate Line Sharing Discount.* By separating a line into a voice portion and an advanced services portion and carrying both voice and advanced services traffic simultaneously, line sharing enables each service to be provided by a different carrier. Conditions that we adopted in the *SBC/Ameritech Order* permitted SBC/Ameritech to provide line sharing exclusively to its advanced services affiliate on an interim basis, subject to SBC/Ameritech offering other carriers a second loop at a substantial discount in order to ensure that competitors received a benefit comparable to this "interim line sharing."[612] Subsequent to our adoption of the *SBC/Ameritech Order*, however, we adopted a further order in our advanced services proceeding, in which we required all incumbent LECs to provide nondiscriminatory unbundled access to the high frequency portion of the local loop, thus promoting line sharing between different carriers.[613] Because incumbent LECs were expected to provide the high frequency portion of the loop UNE to competitors by June 6, 2000,[614] exclusive line sharing between an incumbent LEC and its

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[610] *See Iowa Utilities Bd. v. FCC*, 120 F.3d 753, 812-13 (8th Cir. 1997), *aff'd in part and rev'd in part, AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999), proceedings on remand pending, Eighth Circuit Nos. 96-3321, et al. (Section 251(c) requires incumbents to allow access only to their "existing network -- not to a yet unbuilt superior one"). *But see id.*, 120 F.3d at 813 n.33 (noting that ILECs may nevertheless be required under section 251(c) to develop more limited "modifications" to their network elements that are necessary to accommodate interconnection or access to network elements).

[611] *See* 47 U.S.C. § 251(c)(4) (imposing discounted resale obligation on services the incumbent "provides at retail to subscribers").

[612] *See SBC/Ameritech Order*, 14 FCC Rcd at 14861-64, paras. 365, 369-70; *SBC/Ameritech Conditions*, 14 FCC Rcd at 14987-92, paras. 8, 13a, 14.

[613] *See Line Sharing Order.*

[614] *Id.* at 20982-85, paras. 161-68.

affiliate is no longer permissible.[615]

274. Thus, these provisions shall apply to the merged entity only if our line sharing rules are overturned by a final and non-appealable judicial decision.[616] In this manner, the conditions require Bell Atlantic/GTE to offer unaffiliated carriers the economic equivalent of line sharing if our line sharing rules are rendered ineffective. This "safety net" presents the benefit of putting unaffiliated advanced services providers on comparable economic footing with the merged firm's separate advanced services affiliate, and allowing these carriers to obtain reduced loop costs that otherwise would not be available to them if our line sharing rules are overturned.[617]

275. In the event our line sharing rules are overturned by a final and non-appealable judicial decision and Bell Atlantic/GTE and its separate advanced services affiliate engage in exclusive line sharing, the merged firm will charge unaffiliated providers of advanced services surrogate charges for an additional unbundled loop, provided that the loop is used solely for the provision of advanced services (conforming to an industry-standard spectral mask) to a customer that is receiving voice-grade service, either on a retail or wholesale basis, from a Bell Atlantic/GTE incumbent LEC.[618] The "surrogate line-sharing charges," which Bell Atlantic/GTE also would charge to its separate advanced services affiliate for line sharing, represent a 50-percent discount from the monthly recurring charge and the nonrecurring line or service connection charge.

276. In light of the ripening of incumbent LECs' line sharing obligations, we disagree with commenters that suggest that the applicability of this discount be expanded beyond

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[615] The line sharing compliance audit that Bell Atlantic and GTE agree to undergo will help to identify any delays on the part of Bell Atlantic and GTE in implementing line sharing.

[616] *Cf.* NorthPoint May 5, 2000 Comments at 1 (the proposed interim line sharing conditions, in effect, "would appear to sanction continued delays by Bell Atlantic/GTE in implementing the provision of line sharing to unaffiliated advanced service providers," and thus should be eliminated). United States Telecom Association has appealed the *Line Sharing Order* to the United States Court of Appeals for the District of Columbia Circuit. *United States Telecom Association v. FCC & USA*, No. 00-1012 (D.C. Cir. filed Jan 18, 2000) (held in abeyance, per order issued Apr., 3, 2000, pending Commission action on petitions for reconsideration of the *Line Sharing Order*). We note that in the Offering of UNEs Section of the conditions, Bell Atlantic and GTE commit to continue making UNEs, including the high frequency portion of the loop UNE, available in the event that the underlying rules are stayed or vacated, until such rules are overturned by a final and non-appealable judicial decision. *See* Conditions at para. 39.

[617] This condition is designed to promote rapid deployment of advanced services by removing any cost advantages that the separate advanced services affiliate, which exclusively would receive line sharing capability from a Bell Atlantic/GTE incumbent LEC, would have over other advanced services providers that, because line sharing would no longer be required, would have to provide such services over a stand-alone line.

[618] The appropriate state commission has discretion to deny a carrier the surrogate line sharing charges on any loop for which it finds the use restriction or audit provision violated, and to remove a carrier's entitlement to any future surrogate line sharing charges only upon a finding of an intentional and repeated violation.

instances of exclusive line sharing.[619] In addition, we reject Covad's request to tie expanded surrogate line sharing discounts to a line sharing provisioning benchmark.[620] We find that the line sharing provisioning performance measurement to be proposed by Bell Atlantic/GTE, which will be backed by payment-based incentives,[621] is sufficient to ensure nondiscriminatory provisioning of line sharing.

277. *Loop Conditioning Charges and Cost Studies.* This condition is designed to ensure that Bell Atlantic/GTE will not erect a barrier to the competitive deployment of advanced services by charging excessive rates for loop conditioning. Within 180 days of the merger's closing, Bell Atlantic/GTE will file with state commissions cost studies and proposed rates for conditioning loops used in the provision of advanced services, prepared in accordance with the methodology contained in the Commission's pricing rules for UNEs.[622] Pending approval of state-specific rates, Bell Atlantic/GTE will immediately make available to carriers loop conditioning rates (provided that they are greater than zero) contained in any effective interconnection agreement to which a Bell Atlantic/GTE incumbent LEC is a party, subject to true-up. In addition, subject to true-up, Bell Atlantic/GTE will impose no loop conditioning charges on loops less than 12,000 theoretical feet during this period. Moreover, advanced services providers will have a choice in the amount and extent of conditioning on any particular loop.

278. *Nondiscriminatory Rollout of xDSL Services.* As a means of ensuring that the merged firm's rollout of advanced services reaches some of the least competitive market segments and is more widely available to low-income consumers,[623] Bell Atlantic and GTE will target their deployment of xDSL services to include low-income groups in rural and urban areas. Specifically, for each Bell Atlantic/GTE in-region state, Bell Atlantic/GTE will ensure that at least 10 percent of the rural wire centers where it, or its separate advanced services affiliate, deploys xDSL service will be low-income rural wire centers, meaning those wire centers with the greatest number of low-income households. Similarly, at least 10 percent of the urban wire centers where the merged firm or its separate advanced services affiliate deploys xDSL service in each in-region state will be low-income urban wire centers. These requirements will become

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[619] *See* Covad May 5, 2000 Comments at 16-17. *But see* Bell Atlantic/GTE Mar. 16, 2000 Reply App. C, Response to Comments on Specific Conditions at 9-10 (Bell Atlantic/GTE Response to Conditions Comments). We clarify that the OSS discounts which we agree should apply to all loops used to provide advanced services, and not just loops used for surrogate line sharing, are discounts that are altogether separate from and complementary to the surrogate line sharing discounts. *See* Conditions at para. 25; BlueStar et al. Mar. 1, 2000 Comments at 3, 5-6; CoreComm Mar. 1, 2000 Comments at 31-33.

[620] *See* Covad May 5, 2000 Comments at 17.

[621] *See* Conditions at para. 9.

[622] *See* 47 C.F.R. § 51.501 *et seq.* (requiring the total element long-run incremental cost standard for the pricing of network elements).

[623] *See* Bell Atlantic/GTE Jan. 27, 2000 Supplemental Filing at 19 (*citing SBC/Ameritech Order*, 14 FCC Rcd at 14866, para. 376).

enforceable for any given state 180 days after the merger closes and after Bell Atlantic/GTE and/or its advanced services affiliate has deployed xDSL service in that state in at least 20 urban wire centers (to activate the urban requirement) or 20 rural wire centers (to activate the rural requirement). After the respective effective date, Bell Atlantic/GTE will provide nondiscriminatory deployment of xDSL services for at least 36 months thereafter.[624] Bell Atlantic/GTE will consult with the appropriate state commission, within 90 days of the merger's closing, to classify all Bell Atlantic/GTE wire centers in that state as urban or rural.[625] Furthermore, to assist in monitoring the merged firm's equitable deployment of xDSL, Bell Atlantic/GTE will file publicly a quarterly report with the Commission describing the status of its xDSL deployment, including the identity and location of each urban and rural wire center where it has deployed xDSL. We believe that the public interest benefits of this condition speak loudly and clearly for themselves, and the commenters resoundingly support it.[626]

2. Ensuring Open Local Markets

279. *Carrier-to-Carrier Performance Plan.* As a means of ensuring that Bell Atlantic/GTE's service to telecommunications carriers will not deteriorate as a result of the merger and the larger firm's increased incentive and ability to discriminate, and to stimulate the merged entity to adopt "best practices" that clearly favor public rather than private interests,[627] Bell Atlantic/GTE will file publicly performance measurement data for each of its in-region states with this Commission, and make such data available over the Internet, on a monthly basis. The data will reflect Bell Atlantic/GTE incumbent LECs' performance of their obligations toward telecommunications carriers in 18 different measurement categories.[628] These categories

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[624] We reject IURC's request that we require Bell Atlantic/GTE to deploy xDSL service to 20 rural wire centers and 20 urban wire centers within 24 months after the merger closing date, subject to deployment benchmarks. *See* IURC Mar. 1, 2000 Comments at 13-14. Given the high market demand for advanced services, and that a number of other conditions are designed to spur deployment of advanced services and to benefit low-income consumers, we decline to subject Bell Atlantic/GTE to a specific timetable for advanced services deployment. We note, however, that Bell Atlantic/GTE will report the status of its xDSL deployment, including deployment to low-income areas, to the Commission on a quarterly basis. *See SBC/Ameritech Order*, 14 FCC Rcd at 14909-10, para. 480.

[625] We further reject IURC request that we require state commission approval of urban and rural wire center classifications. *See id.* at 14. We believe that the condition as written provides state commissions with a sufficient vehicle for input into such classifications where they choose to provide it. Moreover, this condition (like all others) does not prevent a state from imposing additional consistent requirements.

[626] *See* APT Mar. 16, 2000 Reply at 6 ("these commitments are a genuine step towards bridging the 'digital divide'"); APT Mar. 1, 2000 Further Comments at 2; American Telemedicine Association Mar. 1, 2000 Comments at 6; CWA Mar. 1, 2000 Comments at 4; IURC Mar.1, 2000 Comments at 13; United States Hispanic Chamber of Commerce Mar. 1, 2000 Comments at 7 (these commitments "will have a positive impact on Hispanic-owned businesses and consumers"); World Institute on Disability Mar. 1, 2000 Comments at 4, 6.

[627] *Cf.* MCI WorldCom Mar. 1, 2000 Supplemental Comments at 18 ("[c]omparative practices analysis, which the merger would undermine, dictates use of the best practice in both [Bell Atlantic and GTE legacy] regions").

[628] This includes the line sharing provisioning performance measurement (or sub-measurement) that Bell Atlantic/GTE is required to propose and implement after the merger closing date. *See* Conditions at para. 9. The Applicants added this commitment in response to comments on their original proposal. *See* MCI WorldCom Mar. 1, 2000 Supplemental Comments at 18. As we did with the line sharing performance measurement proposed by (continued....)

cover key aspects of pre-ordering, ordering, provisioning, maintenance and repair, and billing associated with UNEs, interconnection, and resold services. Many of the 18 measurement categories are divided into numerous disaggregated sub-measurements, thereby tracking Bell Atlantic/GTE's performance for different functions and different types of service. Furthermore, the list of measurements reported by Bell Atlantic/GTE under this condition is not static. This list is subject to addition or deletion, and the measurements themselves are subject to modification, by the Chief of the Common Carrier Bureau, through a joint semi-annual review with Bell Atlantic/GTE.[629]

280. Under this condition, Bell Atlantic/GTE will either achieve the stated performance goal for the agreed-upon measures in each state or, if Bell Atlantic/GTE fails to provide service that meets the stated performance goal, make a voluntary incentive payment to the U.S. Treasury in an amount varying according to the level and significance of discrimination detected. These voluntary incentive payments are subject to monthly state-specific caps that total, across all states, as much as $259 million in the first year, $389 million in the second year, and $516 million in the third year (*i.e.*, a total of up to $1.164 billion over three years), with a credit for amounts paid to states and competitive LECs under state-imposed performance monitoring plans or under liquidated damages provisions of interconnection agreements.[630] Bell

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SBC subsequent to its merger with Ameritech, *see* http://www.fcc.gov/ccb/mcot/misc_reports/, we will place Bell Atlantic/GTE's proposal on our website, thus affording competitive LECs the opportunity for public comment. *See* Covad May 5, 2000 Comments at 16. *But see* Bell Atlantic/GTE May 9, 2000 Response App. A, Responses to Specific Allegations Regarding Proposed Conditions at A-5 (Bell Atlantic/GTE Responses to Specific Conditions Allegations) (objecting based on the Applicants' assertion that the new performance measurement or sub-measurement will be based on measurements developed in collaborative proceedings in New York and California, in which competitive LECs participated, such that, in the Applicants' view, competitive LECs already "have had ample input" into the development of the new measurement or sub-measurement).

[629] *See, e.g.*, Conditions Attach. A, Carrier-to-Carrier Performance Assurance Plan at para. 4 (Performance Plan). Indeed, the scope of this semi-annual review is broad, and it encompasses the business rules associated with such measurements. Other elements of the plan also are subject to periodic review and modification by the Chief of the Common Carrier Bureau, including certain aspects of the payment calculation mechanism. Thus, we agree with the Applicants that AT&T's contention that the plan submitted by the Applicants is "fixed and inalterable" is incorrect. *See* Bell Atlantic/GTE Response to Conditions Comments at 11. *But see* AT&T Mar. 1, 2000 Opposition at 29-30. *See also* MCI WorldCom Mar. 1, 2000 Supplemental Comments at 17 (maintaining that the plan should allow the Commission to reallocate remedies to address severe performance deficiencies or add new measures if necessary to deter discrimination).

[630] The payment caps proffered by the Applicants are intended to be "directly proportionate" to those that we adopted with respect to SBC and Ameritech in their merger. *See* Bell Atlantic/GTE Jan. 27, 2000 Supplemental Filing at 24. *Cf. SBC/Ameritech Order*, 14 FCC Rcd at 14868, para. 378; *SBC/Ameritech Conditions*, 14 FCC Rcd at 14999-15000, para. 23. As part of the calculation of voluntary payments, Bell Atlantic/GTE will increase the payments for performance measurements where observations are particularly low, as well as for specific sub-measurements representing low-volume, nascent services. For these sub-measurements, the per-occurrence payments will be tripled. The Applicants added these provisions subsequent to their initial proposal, in response to comments expressing concern regarding a lack of appropriate remedies for metrics with typically low monthly volumes. *See* MCI WorldCom Mar. 1, 2000 Supplemental Comments at 16. We find that this "low-volume" multiplier will help to ensure that the Applicants' proposed incentive mechanism will offer meaningful protections where service volumes are low. *See SBC/Ameritech Order*, 14 FCC Rcd at 14868 n.706. Particularly in light of these modifications, we find that the voluntary payment structure and cap are sufficient to address the limited (continued....)

Atlantic/GTE's potential liability may be reduced by up to $125 million in the third year if Bell Atlantic/GTE completes and deploys its OSS interface and business rule changes before their target date, depending upon the change and how early it is completed.

281. The specific performance measures that Bell Atlantic/GTE will implement in the Bell Atlantic legacy service areas are based upon performance measures developed in a New York collaborative process involving Bell Atlantic's application for in-region, interLATA relief. The performance measures that Bell Atlantic/GTE will implement in the GTE legacy service areas are based primarily upon performance measures applicable to GTE that were developed in a collaborative process in California.[631] Rather than develop a new set of measures for this merger proceeding, we find that relying upon these performance measures and corresponding business rules, which may be modified over time, will achieve the goals of the Performance Plan and conserve time and resources.[632] We emphasize that use of such measures in this merger review proceeding is not meant to affect, supplant, or supersede any existing or future state performance plan.[633]

282. These limited performance measures are intended to offset or prevent some of the merger's potential harmful effects; they are not designed or intended as anti-backsliding measures for purposes of section 271.[634] Indeed, to the extent that GTE legacy service areas are not subject to the market opening requirements of section 271 in order for GTE to provide in-region, interLATA services originating from those areas, these performance measures constitute a significant benefit of these conditions where states have not implemented performance plans with respect to GTE.[635] The present performance plan must be viewed in the context of the entire

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purposes of the Carrier-to-Carrier Performance Plan – to neutralize the merged firm's increased incentive and ability to discriminate and to remedy other merger-specific potential harms such as the loss of a major incumbent LEC benchmark. Thus, we disagree with WorldCom's contention that the payment caps are inadequate to discourage the merged firm from providing substandard service to competitors. *But see* MCI WorldCom Mar. 1, 2000 Supplemental Comments at 15-17.

[631] *See* Bell Atlantic/GTE Jan. 27, 2000 Supplemental Filing at 24. As lines in the GTE legacy service areas in Pennsylvania and Virginia are converted to achieve network and OSS uniformity with Bell Atlantic's legacy systems in those states, *see* Conditions at para. 19f, performance for those lines will be measured using the performance measurements and business rules that apply to Bell Atlantic legacy service areas. *See* Conditions Attach. A-1b, BA/GTE Performance Measurements GTE States. *Cf.* Allegiance Mar. 1, 2000 Comments at 8 (suggesting that Bell Atlantic/GTE should implement Bell Atlantic systems and policies in GTE's Pennsylvania and Virginia service areas in accordance with the intervals that we adopted in the *SBC/Ameritech Order*).

[632] *See SBC/Ameritech Order*, 14 FCC Rcd at 14868, para. 379.

[633] *But see* AT&T Mar. 1, 2000 Opposition at 34-36 (alleging that these conditions would as a practical matter serve as a *de facto* ceiling on state performance plans). State commissions may take appropriate actions to ensure that these conditions do not impede state-specific performance plans, either in the context of section 271 applications or outside of it.

[634] *See* MCI WorldCom Mar. 1, 2000 Supplemental Comments at 19 (*citing SBC/Ameritech Order*, 14 FCC Rcd at 14868, para. 380).

[635] *See generally* CoreComm Mar. 1, 2000 Comments at 26 (asserting that "[t]he absence of the Section 271 incentive with respect to GTE is a significant public convenience detriment").

set of proposed safeguards that comprise the overall merger conditions package. In this regard, we expect – and we encourage – each state to adopt rigorous and extensive performance monitoring programs in connection with section 271 proceedings. Under these conditions, therefore, Bell Atlantic/GTE's obligations under the plan in a given Bell Atlantic legacy state will terminate upon the company's authorization to provide in-region, interLATA service in that state.[636] In a similar vein, these obligations may cease to be effective in any Bell Atlantic/GTE state as determined by the Common Carrier Bureau Chief where the state commission has adopted a comprehensive performance plan applicable to Bell Atlantic/GTE.[637] The condition will expire otherwise 36 months after the payment obligation arises in the state.[638]

283. We reject the suggestion of a number of commenters that we impose the complete list of measurements adopted by the New York commission and California commission.[639] We also decline to adopt other specific performance measurements advocated by certain parties,[640] or to make specific changes in the proposal, such as altering the benchmarks or statistical methodology.[641] We reiterate that the Performance Plan constitutes the Applicants' voluntary proposal for monitoring and remedying the specific potential public interest harms identified in the instant merger, including the potential for increased discrimination by the larger merged

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[636] *Cf.* Bell Atlantic/GTE Response to Conditions Comments at 15 ("[t]he very fact that Bell Atlantic/GTE have designed the performance plan to sunset in a particular state when Bell Atlantic receives Section 271 authority for that state demonstrates that the plan is not intended as an 'anti-backsliding' plan for Section 271 purposes"). Consistent with the Applicants' sentiments and our explicit holding above, we reject CoreComm's argument that section 271 authority should not relieve Bell Atlantic/GTE of its responsibility to meet carrier-to-carrier performance standards in the Bell Atlantic legacy service areas subject to such authority. In support of its argument, CoreComm asserts that carrier-to-carrier performance standards become even more important following section 271 authority in order to prevent against backsliding. *See* CoreComm Mar. 1, 2000 Comments at 40. Likewise, we reject Covad's averment that Bell Atlantic/GTE still should be subject to the Performance Plan in New York, notwithstanding Bell Atlantic's section 271 authority there. *But see* Covad Mar. 1, 2000 Comments at 16.

[637] The Common Carrier Bureau Chief shall determine whether a state-approved performance plan is "comprehensive" for the purpose of these conditions. A state-approved mechanism may be determined not to be "comprehensive" if, for example, it omits a particular measurement or category of measurements deemed important by the Common Carrier Bureau Chief. The Common Carrier Bureau Chief may decide to retain part of the reporting and penalty obligations associated with these conditions where a state-approved mechanism is determined not to be comprehensive. *Cf.* CoreComm Mar. 1, 2000 Comments at 41 (state performance plan "escape" only should be permitted if the state plan imposes noncompliance penalties that are at least equal to those in the Performance Plan); Covad Mar. 1, 2000 Comments at 16 (between the Performance Plan and a state plan, the stronger and more procompetitive of the plans should control).

[638] The Applicants' initial proposal also provided for termination of Bell Atlantic/GTE's obligations under the Performance Plan on the date on which the merged firm completes 50 percent of its out-of-region investment commitment. The Applicants subsequently abandoned this facet of their proposal. *See* CoreComm Mar. 1, 2000 Comments at 40.

[639] *But see, e.g.,* NEXTLINK Mar. 16, 2000 Reply at 12; AT&T Mar. 1, 2000 Opposition at 33-34; CoreComm Mar. 1, 2000 Comments at 39-40; MCI WorldCom Mar. 1, 2000 Supplemental Comments at 17-18.

[640] *But see, e.g.,* BlueStar et al. Mar. 1, 2000 Comments at 17.

[641] *But see, e.g.,* MCI WorldCom July 19, 1999 Comments at 17-19.

entity and the loss of another major incumbent LEC benchmark. The adoption of these measures in the present merger context does not signify that these performance measures would be sufficient in the context of a section 271 application. In contrast, performance plans that are being developed by state commissions in the context of section 271 proceedings serve a different purpose, and may be designed to cover more facets of local competition and to prevent a BOC from backsliding on section 271 obligations.[642] The Performance Plan that we adopt today serves a more limited purpose, and hence has a more limited scope. Moreover, we note that, to account for necessary revisions or updates, the plan includes a semi-annual review of the plan's measurements by the Chief of the Common Carrier Bureau and Bell Atlantic/GTE. Significantly, the Performance Plan is only one component of a broad package of voluntary merger safeguards proposed by the Applicants. Measures that are sufficient as part of a comprehensive package of safeguards in the present merger context may not be adequate in the section 271 context.

284. Similarly, we decline to require region-wide uniformity across measurements between different states, as suggested by several commenters.[643] We find that the plan is sufficient, for merger purposes, to reduce the larger entity's increased incentive for discrimination by giving its individual operating companies incentives to treat competitors as they would Bell Atlantic's or GTE's own retail operations. Other merger commitments, such as the most-favored nation conditions, address uniformity and the spread of best practices across the merged firm's service region.

285. *Uniform Enhanced OSS (Including Advanced Services OSS).* Effective, nondiscriminatory access to OSS is critical for achieving the 1996 Act's local competition objectives. The commitments in this condition are intended to facilitate local services competition (including advanced services competition) in the merged entity's combined service area by providing entrants additional and more economical options for accessing the merged entity's OSS on a non-discriminatory basis as compared to its retail operations, and by encouraging constructive participation by local entrants in the development of the merged entity's systems used by those local entrants.[644] This condition will thus guard against discriminatory treatment by the merged entity to its rivals, as well as reduce the costs and uncertainty of providing competing services.[645]

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[642] *See* MCI WorldCom Mar. 1, 2000 Supplemental Comments at 19 (*citing SBC/Ameritech Order*, 14 FCC Rcd at 14910, para. 481).

[643] *But see* NEXTLINK Mar. 16, 2000 Reply at 12; Allegiance Mar. 1, 2000 Comments at 2, 6-8 (asserting that Bell Atlantic/GTE should commit to implement the "best practices" of Bell Atlantic's carrier-to-carrier performance standards throughout the combined company's service territory); BlueStar et al. Mar. 1, 2000 Comments at 3; IURC Mar. 1, 2000 Comments at 11. *See SBC/Ameritech Order*, 14 FCC Rcd at 14910-11, para. 482.

[644] *SBC/Ameritech Conditions*, 14 FCC Rcd at 15001, para. 25.

[645] We note, in addition, that the conditions we adopt today generally set the standard for the Applicants' obligations under those conditions. Although the details of implementation may be worked out in a collaborative session, or under the auspices of an independent arbitrator where necessary, the Commission at all times maintains (continued....)

286. Specifically, Bell Atlantic/GTE commits to establish uniform OSS interfaces and business rules within the former Bell Atlantic service areas and separately within the former GTE service areas. In addition, the merged entity will implement uniform transport and security protocols, uniform OSS functions and product ordering capabilities,[646] and a uniform change management process across its combined service area. Although several commenters suggested we should require uniform interfaces and business rules across the entire combined region, as we did in the SBC/Ameritech proceeding, we find that such a condition is not appropriate under the facts of this proceeding. Unlike SBC and Ameritech, which were both Bell System companies, and therefore had relatively similar OSS, Bell Atlantic and GTE's systems "developed from significantly different sources and, as a result, . . . differ significantly [from each other]."[647] Given these facts, the Applicants have asserted that to achieve uniformity through the combined region: (1) it likely will cost "hundreds of millions," if not "billions," of dollars; (2) it could take more than five years to achieve; and (3) "given the size of the work effort . . . and the unknowns about the true scope and scale of the project, there is no certainty that Bell Atlantic/GTE would be able to complete such a project."[648] No commenter has provided any persuasive evidence rebutting the Applicants' claims.[649] As such, we rely on the Applicants' assertions in concluding that it is, therefore, not appropriate to require complete uniformity in this proceeding because of the cost and uncertainty of establishing uniform OSS interfaces and business rules across the combined region.

287. In addition to the commitments described in the preceding paragraph and in response to the Comments, however, the Applicants have committed to implement uniform interfaces and business rules for at least 80 percent of the access lines for the combined Bell Atlantic and GTE service areas in Pennsylvania and Virginia within five years after the Merger Closing Date.[650] Although this condition falls short of providing complete uniformity, we find that the Applicants' commitment to achieve uniform interface and business rules within Bell Atlantic's service areas and separately within GTE service areas, and commitment to convert systems to achieve such uniformity across most, if not all, of the Applicants' combined service areas in Pennsylvania and Virginia furthers the 1996 Act's local competition objectives by providing competitors with "one-stop shopping" within large areas of the Applicants' region.

(Continued from previous page)
final enforcement authority over Bell Atlantic/GTE's implementation of the OSS commitments. *See SBC/Ameritech Order*, 14 FCC Rcd at 14912 n.884.

[646] Conditions, Attach. B-1 (specifying electronic OSS interface functions to be made uniform across the combined Bell Atlantic/GTE region); Conditions, Attach B-2 (specifying a region-wide, uniform products set which will be available through Bell Atlantic/GTE's application-to-application ordering capability). *See also* CoreComm Mar. 1, 2000 Comments at 35 (requesting like functionality throughout Applicants' combined service area).

[647] Letter from Patricia E. Koch, Assistant Vice President Federal Regulatory, Bell Atlantic, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 98-184 (filed Apr. 14, 2000), Declaration of Paul A. Lacouture.

[648] *Id.*

[649] *E.g.*, WorldCom May 5, 2000 Further Supplemental Comments at 10-11.

[650] *See* Allegiance Mar. 1, 2000 Comments at 8; Z-Tel Mar. 1, 2000 Comments at 4.

288. We find that Bell Atlantic/GTE has made other substantial commitments that, among other things, provide assurances competing carriers will have input into the development and deployment of the Applicants' OSS through collaboratives, disputes will be arbitrated by a neutral third-party, the Applicants' will make incentive payments for non-compliance, and competing carriers will have a role in the change management process. For example, prior to implementing its OSS commitments, the merged firm first will prepare a plan of record ("Plan") outlining the steps it proposes to take in unifying its OSS in the separate Bell Atlantic and GTE legacy service areas, or in the combined service areas (including Pennsylvania and Virginia), as applicable.[651] Competitors shall have the opportunity to comment on the Plan and its scope, including the procedures for a collaborative process.[652] Following submission of the Plan, the merged firm will collaborate with participating competitive LECs to reach agreement on the interfaces, enhancements, business rules, data format specifications, transport and security protocols, and OSS functions and product ordering capabilities to be implemented.[653] The merged entity must ensure that it makes available to competing carriers all information necessary for them to fully evaluate the Plan (including, but not limited to, information about its back-end systems, OSS interfaces, business rules, data specifications, and hardware capabilities) and to participate productively in collaborative sessions. Failure to provide a sufficient Plan will be considered a violation of these commitments and this order, and may subject the merged entity to penalties, fines, or forfeitures pursuant to general Commission authority.

289. Bell Atlantic/GTE and the participating competing carriers shall seek to reach a written agreement resolving any issues raised by the Plan and the competing carriers' comments to the Plan. To the extent that Bell Atlantic/GTE and the competitors cannot reach agreement, or have disputes about the scope of the Plan, including the procedures governing the collaborative process, they may request resolution of such disputes by binding arbitration conducted by an independent third-party.[654] We expect that the collaborative and arbitration processes will generally function in the same way as the processes specified in the conditions attached in the *SBC/Ameritech Order*. After completion of the collaboratives and any necessary arbitrations,

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[651] In attempting to comply with the OSS requirements of these commitments, Bell Atlantic/GTE shall not reduce the existing functionality, products, or services available to competing carriers, or decrease the capability to flow through transactions to its OSS systems because these conditions are intended to result in "best practices." If Bell Atlantic/GTE believes it cannot satisfy these commitments without doing so, this may be discussed in the collaborative sessions at the request of Bell Atlantic/GTE or participating competing carriers.

[652] We reject, however, the other more specific requirements for the plan of record suggested by commenters. Letter from Karen M. Johnson, Associate Counsel, MCI WorldCom, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket 98-184 (filed Apr. 14, 2000) at 2; MCI WorldCom Mar. 1, 2000 Supplemental Comments at 11-12; NorthPoint Mar. 1, 2000 Comments at 9. We find that these are details that will be addressed in the collaborative process. We find no reason to prevent the voluntary participants in the collaboratives from attempting to determine the best manner in which to implement the requirements of these conditions.

[653] If the Plan of Record does not specify a collaborative process competitive LECs may, nonetheless, request that any issues they raise in their written comments to the Plan be addressed in a collaborative process.

[654] Conditions at paras. 19(b), 21; *see also SBC/Ameritech Order*, 14 FCC Rcd at 15002-04, para. 28; *id.* at 14870, para. 383.

Bell Atlantic/GTE will develop and deploy the agreed-upon or arbitrated OSS requirements, such as, but not limited to, interfaces, enhancements, and business rules, within specified periods of time.[655] Once deployed, Bell Atlantic/GTE will maintain these OSS requirements for not less than 36 months.[656]

290. The Applicants have also committed to arbitration of disputes concerning the implementation of the Applicants' commitments and payment for non-compliance. Bell Atlantic/GTE must substantially comply with the development and deployment requirements described in these commitments or will be subject to voluntary incentive payments to the U.S. Treasury of up to $10,000 per business day per state per violation, or up to $110,000 per day across all of its in-region states, for a missed target date.[657] An arbitrator will determine if Bell Atlantic/GTE is in substantial compliance and the payment due.[658] As payments will reach back to the date of the initial violation, Bell Atlantic/GTE has little incentive to delay arbitration.[659] Subsequent to an arbitration finding that Bell Atlantic/GTE is not in compliance with the requirements of the condition, it may file a notice with the Chief of the Common Carrier Bureau that it has corrected the non-compliance and halt payments. If the arbitrator makes a written finding, and the Chief of the Common Carrier concurs in writing, that Bell Atlantic/GTE intentionally and willfully failed to comply with the relevant requirements, Bell Atlantic shall make additional payments of up to $110,000, as determined by the arbitrator, for each business day of non-compliance.[660]

291. The commitments will counterbalance other difficulties that competing carriers

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[655] *E.g.*, Conditions at para. 19(e). We agree with MCI WorldCom and Bell Atlantic, however, that nothing in this Order or these Conditions "excuses or modifies the obligations with respect to uniform interfaces established in the *Bell Atlantic/NYNEX Order* or the complaint proceeding referenced in paragraph 19 of the proposed conditions." Bell Atlantic/GTE Response to Conditions Comments at 19, n.7 (*citing* MCI WorldCom Mar. 1, 2000 Supplemental Comments at 12).

[656] *See* Conditions at para. 64 (each condition is designed to yield at least 36 months of benefit). Thus, Bell Atlantic/GTE may not claim that its obligations under this set of conditions cease 36 months after the merger closing date, because that would allow for Bell Atlantic/GTE to stop providing these interfaces and enhancements merely six months after the two-and-a-half years post-merger closing that it has afforded itself to deploy such interfaces and enhancements.

[657] We disagree with Commenters' concerns that the terms "up to" and "substantial compliance" inject uncertainty into this provision. *See* MCI WorldCom Mar. 1, 2000 Supplemental Comments at 13; NorthPoint Mar. 1, 2000 Comments at 11. Rather, we conclude that such language merely permits the arbitrator to match the voluntary payment amount to the nature and severity of the violation.

[658] The Arbitrator may determine that more than one "violation" has occurred in a state on a given day. The total of all voluntary payments relating to any or all milestones under this condition may not, however, exceed $20 million. Conditions at para. 24.

[659] *SBC/Ameritech Order*, 14 FCC Rcd at 14911-12, para. 485 (interpreting same language).

[660] Amongst the compliance issues that the arbitrator may consider under this provision is whether Bell Atlantic/GTE indeed corrected the non-compliance by the time that it filed a notice of correction with the Chief of the Common Carrier Bureau.

encounter interfacing with Bell Atlantic/GTE's OSS. For example, Bell Atlantic/GTE will adopt, subject to state approval where necessary, throughout its region the current Bell Atlantic change management process originally developed through collaboratives with competitive LECs as part of the section 271 proceeding before the New York Public Service Commission.[661] Under this condition, states may choose whether to approve Bell Atlantic/GTE's plan for uniform change management.[662] Bell Atlantic/GTE will also offer -- for a period of 30 months from the Merger Closing Date -- to develop and deploy an electronic bonding interface (EBI) throughout its combined in-region service areas for maintenance and repair of resold local services and UNEs, including all enhancements that comport with industry standards. Specifically, the requesting carrier and Bell Atlantic/GTE must enter into a written contract wherein they agree to the nature of the EBI implementation and the requesting carrier agrees to pay Bell Atlantic/GTE for the costs of development of any enhancements *in advance of* industry standards.[663] Disputes between a requesting carrier and Bell Atlantic/GTE relating to the development and deployment of the EBI shall be subject to the dispute resolution process for interfaces described in this condition.

292. This condition also provides incentive for Bell Atlantic/GTE to improve the systems and processes for pre-ordering and ordering of UNEs used to provide xDSL and other advanced services, and to compensate carriers for the difficulties associated with interfacing with divergent and unenhanced advanced services OSS. Bell Atlantic/GTE will offer telecommunications carriers a 25 percent discount from the recurring and nonrecurring charges for unbundled loops used in the provision of advanced services until: (1) Bell Atlantic/GTE has developed and deployed, in the manner described above, the advanced services OSS interfaces, including any agreed-upon or arbitrated enhancements; *and* (2) the Bell Atlantic/GTE separate advanced services affiliate uses such interfaces for pre-ordering and ordering at least 75 percent of the facilities it uses to provide advanced services.[664] This discount will have the added benefit of lowering unaffiliated carriers' costs of providing competing advanced services. Though Covad objects to these provisions to the extent that they do not mirror the advanced services OSS commitments that we adopted in the SBC/Ameritech proceeding,[665] competitive LECs may seek,

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[661] Conditions at para. 20; *See Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (rel. Dec. 22, 1999) at para. 104; *see also* WorldCom May 5, 2000 Further Supplemental Comments at 14.

[662] Despite the benefits competing carriers derive from a uniform system of change management, the condition permits a state, if it so desires, to establish its own change management plan.

[663] Requesting carriers will not have to pay for the costs of the development and deployment of EBI compliant with, but not exceeding, industry standards. For example, a requesting carrier will not have to pay for the development and deployment of an industry compliant EBI in a service area previously lacking an EBI at all.

[664] Bell Atlantic must continue to provide the discount until it has filed an *ex parte* letter to the Chief of the Common Carrier Bureau certifying that it has reached the 75% threshold and specifying the evidence upon which it has relied.

[665] Covad Mar. 1, 2000 Comments at 13; *see SBC/Ameritech Conditions*, 14 FCC Rcd at 14992-96, paras. 15-18.

in the collaboratives, advanced services OSS enhancements in advance of industry standards and expedited milestones for the development and deployment of advanced services OSS and enhancements to it.

293. Finally, commenters also suggest that the Commission should require third-party testing of the OSS interfaces (including enhancements) to ensure that they are uniform, comply with applicable standards and guidelines, and are scalable and workable, meaning that they support seamless end-to-end interoperability for all five core OSS functions.[666] Although we find that comprehensive third-party testing is useful in other contexts, such as section 271 proceedings -- in fact, we strongly encourage the use of independent third-party testing as a means of ascertaining whether a BOC is meeting section 271's requirements[667] -- we decline to require Bell Atlantic/GTE to submit its OSS interfaces to third-party testing as part of this merger proceeding. We find it sufficient that Bell Atlantic/GTE has committed to make voluntary incentive payments if it fails to deploy OSS upgrades in substantial compliance with the collaborative agreement. Moreover, we note that should Bell Atlantic/GTE fail to develop and deploy OSS interfaces consistent with the requirements of the conditions or any other conditions, it would be subject to an enforcement action at the Commission's discretion. We find that this potential liability should provide adequate incentive for the merged firm to develop and deploy OSS interfaces that fully comply with the collaborative agreement and are scalable and workable.[668]

294. *Training in the Use of OSS for Qualifying Carriers.* As a means of reducing the barriers to new entry in its combined region, Bell Atlantic/GTE will provide special OSS assistance to any "qualifying" competitive LEC. As in the *SBC/Ameritech Conditions*, the Applicants initially proposed to define a "qualifying" competitive LEC as a competitive LEC having less than $300 million in total annual telecommunications revenues.[669] The Applicants subsequently expanded their proposal, however, to include in the definition of a "qualifying" competitive LEC: any competitive LEC that presently serves end users in Bell Atlantic service areas and not in GTE service areas, but that seeks to extend its services into GTE service areas; any competitive LEC that presently serves end users in GTE service areas and not in Bell Atlantic service areas, but that seeks to extend its services into Bell Atlantic service areas; and any competitive LEC that does not presently serve end users in the service areas of either legacy company.[670] This revised definition of a "qualifying" competitive LEC, which expands the field

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[666] *See* NEXTLINK Mar. 16, 2000 Reply at 13; BlueStar et al. Mar. 1, 2000 Comments at 16-17; CoreComm Mar. 1, 2000 Comments at 37-39; RCN Mar. 1, 2000 Comments at 2-3.

[667] *See SBC/Ameritech Order*, 14 FCC Rcd at 14912, para. 486.

[668] *See id. But see* BlueStar et al. Mar. 1, 2000 Comments at 16-17; CoreComm Mar. 1, 2000 Comments at 39.

[669] *See* Bell Atlantic/GTE Jan. 27, 2000 Proposed Conditions at 30-31. *See also SBC/Ameritech Order*, 14 FCC Rcd at 14871, para. 385; *id.* at 15010, para. 36. The revenue restriction includes revenue from any affiliates, parents, subsidiaries and telecommunications joint ventures of the competitive LEC, but excludes revenues from wireless services.

[670] In response to comments on their initial proposal, the Applicants also changed the language of their proposal, so that, like in the *SBC/Ameritech Conditions,* OSS assistance is made available to any competitive LECs that have (continued....)

of competitive LECs that are eligible to take advantage of such special OSS assistance, substantially enhances the benefit of this condition by further reducing barriers to new local competitive entry.

295. As for the nature of this OSS assistance, the merged firm will designate and make available for a minimum of 36 months at no additional cost one or more team(s) of OSS experts to assist these qualifying carriers with OSS issues. The condition also obligates Bell Atlantic/GTE to identify and develop training and procedures beneficial to such qualifying carriers. Disputes regarding whether a carrier qualifies under this condition will be resolved by the appropriate state commission. We reject BlueStar et al's and CoreComm's request that this OSS assistance begin 30 rather than 90 days after the merger closing date.[671] We find that there is no material difference between 30 and 90 days given the fact that this commitment will be adhered to for a full three years.

296. *Collocation, Unbundled Network Elements, and Line Sharing Compliance*. The Applicants have agreed to implement a number of measures to ensure that the companies provide collocation to telecommunications carriers in a lawful manner.[672] Before the merger closing date, Bell Atlantic and GTE will file a tariff or offer to amend interconnection agreements in each Bell Atlantic/GTE state where Bell Atlantic and/or GTE have not done so already to demonstrate compliance with the Commission's collocation rules.[673] In addition, prior to the merger closing date, an independent auditor, approved by the Chief of the Common Carrier Bureau, will conduct a review and determine whether each company is offering collocation terms and conditions, and has in place methods and procedures, that comply with the Commission's rules.[674] The Applicants' original proposal provided that the attestation report emanating from this audit

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"attended any OSS training required by their interconnection agreements," rather than limiting OSS assistance to competitive LECs that have "completed any available Bell Atlantic/GTE OSS training." *See* CoreComm Mar. 1, 2000 Comments at 34.

[671] *See* BlueStar et al. Mar. 1, 2000 Comments at 3; CoreComm Mar. 1, 2000 Comments at 33-34. *Compare SBC/Ameritech Conditions*, 14 FCC Rcd at 15010, para. 36b (commencing assistance 30 days after the merger closing) *with* Conditions at para. 26b (commencing assistance 90 days after the merger closing).

[672] *See* NEXTLINK Mar. 16, 2000 Reply at 14-15; BlueStar et al. Mar. 1, 2000 Comments at 4; CoreComm Mar. 1, 2000 Comments at 42. *See also Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4771-94, paras. 19-60 (1999). Though the D.C. Circuit vacated certain rules adopted in that order, most of the collocation rules that we adopted there were affirmed. *See GTE Service Corporation v. FCC*, 205 F.3d 416 (D.C. Cir. 2000).

[673] Bell Atlantic and GTE should work with the state commission in each Bell Atlantic/GTE state where the relevant company has not yet filed a tariff or offered to amend interconnection agreements to demonstrate compliance with the Commission's collocation rules, in order to determine which method of demonstrating compliance is preferred by the commission in the particular state. *See* IURC Mar. 1, 2000 Comments at 19 n.38.

[674] We decline to impose the requirement sought by BlueStar et al. that the merged entity maintain uniform collocation practices based on Bell Atlantic "best practices." *But see* BlueStar et al. Mar. 1, 2000 Comments at 4. An attestation report resulting in a positive opinion, with few or no exceptions noted, presumptively would be an indication of sufficient collocation practices in GTE service areas.

would be filed within 180 days after the merger closing. In response to protest from several commenters, however,[675] the Applicants revised their proposal such that the attestation report will be filed within 10 days after the merger closing.[676]

297. After the merger closing, an independent auditor will develop and implement a comprehensive audit of the merged company's compliance with the Commission's collocation requirements for four full months after the closing.[677] The audit requirements provide for Commission review of the audit program, which we expect will enhance the thoroughness and quality of the audit. The independent auditor will present its final audit report to the Commission, and publicly file a copy with the Secretary, no later than 210 days after filing of the methods and procedures audit attestation report.[678] If the auditor's report reveals problems with Bell Atlantic/GTE's collocation practices and policies, we fully expect that Bell Atlantic/GTE will implement immediately any necessary corrective action. After reviewing the auditor's findings, the Commission may, of course, decide to take additional action as deemed necessary and appropriate. As an additional incentive for the merged firm to provide efficient collocation, Bell Atlantic/GTE will waive the nonrecurring charges for physical, virtual, adjacent and cageless collocation arrangements if the firm misses the collocation due date by more than 60 days.[679]

298. Also in response to public comment on their original proposal,[680] the Applicants

[675] *See, e.g., id.* (expressing "dismay[]" that Bell Atlantic and GTE "are not prepared to immediately certify that they are in compliance with the Commission's *Collocation Order*"); MCI WorldCom Mar. 1, 2000 Supplemental Comments at 19.

[676] *See SBC/Ameritech Conditions*, 14 FCC Rcd at 15011, para. 39. We decline to grant the request of CoreComm and NEXTLINK that we require the attestation report to be filed prior to the merger closing date. *But see* NEXTLINK Mar. 16, 2000 Reply at 15; CoreComm Mar. 1, 2000 Comments at 42. We do not wish to suspend the timing of the merger closing date awaiting arrival of the attestation report. We believe that permitting the filing of the attestation report within 10 days after the merger closing date constitutes sufficient proximity to the merger closing date to render the report useful, and, in any event, the report is based on an audit conducted prior to the merger closing.

[677] The auditor will take into account any collocation audits performed within the 18 months prior to the merger closing date.

[678] *Cf. SBC/Ameritech Conditions*, 14 FCC Rcd at 15012, para. 40e (requiring that final audit report be submitted no later than 10 months after the merger closing date). We believe that the filing date for the final collocation audit report in this merger presents the advantages of being expedited yet still covering a sufficient period to yield useful data.

[679] *See SBC/Ameritech Order*, 14 FCC Rcd at 14872, para. 387. The Applicants qualify this incentive by adding that the merged entity would not be required to waive these charges if it can demonstrate that the missed due date was caused solely "by equipment vendor delay beyond Bell Atlantic/GTE control." Conditions at para. 27d. This exception only applies, however, where Bell Atlantic/GTE demonstrates to this Commission or to the relevant state commission(s) that no alternative vendor reasonably and timely could provide Bell Atlantic/GTE with necessary equipment.

[680] *See, e.g.*, NEXTLINK Mar. 16, 2000 Reply at 14-15; BlueStar et al. Mar. 1, 2000 Comments at 4-5, 7-9; CoreComm Mar. 1, 2000 Comments at 45.

agreed to undergo an independent audit of their compliance with our UNE and line sharing rules.[681] These UNE and line sharing compliance audit provisions take virtually the same form as the collocation audit conditions.[682] One difference, however, is that unlike in the collocation compliance plan, there is no separate audit of Bell Atlantic and GTE's UNE and line sharing methods and procedures compliance.[683] In addition, the independent auditor will present its final UNE and line sharing audit report to the Commission, and publicly file a copy with the Secretary, no later than 180 days after the merger closing date, unlike the approximately 220 days after merger closing afforded for submission of the final collocation audit report. Likewise with this audit, we fully expect Bell Atlantic/GTE to implement immediately any necessary corrective action in response to adverse findings by the auditor or we may take any necessary and appropriate action. This additional audit of Bell Atlantic/GTE's compliance with our UNE and line sharing rules will be particularly beneficial in assessing Bell Atlantic/GTE's adherence to these important procompetitive requirements.

299. We find that this condition will make it quicker and easier for the Commission and others to detect non-compliance with our collocation, UNE, and line sharing rules both prior to and following the merger.[684] To the extent that the audits uncover one or more violations of our rules, the Commission's audit staff will refer the matter to the Commission's Enforcement Bureau. These audits thus will assist this Commission and state commissions[685] in reducing barriers to competitive provisioning of local voice and advanced services.

300. *Most-Favored Nation Arrangements.* This condition, designed to facilitate market entry throughout Bell Atlantic/GTE's region as well as the spread of best practices (as that term is understood by Bell Atlantic/GTE's competitors), has two components. First, where it is feasible given technical limitations, Bell Atlantic/GTE will offer telecommunications carriers operating within its service area any interconnection arrangement[686] or UNE that Bell Atlantic/GTE, as a competitive LEC outside of its incumbent service area, secures from the

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[681] *See UNE Remand Order; Line Sharing Order.*

[682] *Compare* Conditions at para. 27c (collocation compliance examination engagement) *with id.* at para. 28a (UNE and line sharing compliance examination engagement). Consistent with the overall audit requirements contained in the conditions, these audits will be conducted in accordance with auditing industry standards. *See* American Inst. of Certified Pub. Accountants, ATTESTATION ENGAGEMENTS, AT § 100; COMPLIANCE ATTESTATION, AT § 500.01.

[683] Rather, the methods and procedures audit will be collapsed into the comprehensive compliance audit. *See* Conditions at para. 28a(6) (the independent auditor will evaluate, *inter alia*, the sufficiency of Bell Atlantic/GTE's methods, procedures, and internal controls for compliance with the Commission's UNE and line sharing rules); *see also* American Inst. of Certified Pub. Accountants, CONSIDERATION OF INTERNAL CONTROL IN A FINANCIAL STATEMENT, AU § 319; COMPLIANCE ATTESTATION, AT § 500.04 (addressing examination of internal controls).

[684] *See, e.g.*, BlueStar et al. Mar. 1, 2000 Comments at 4-5.

[685] *See* Conditions at para. 27c(5) & (7). Pursuant to its delegated authority, the Common Carrier Bureau will work closely with the state commissions in this effort.

[686] This commitment encompasses, both for out-of-region and in-region agreements, entire interconnection agreements or selected provisions from them.

incumbent LEC after the merger closing date,[687] and that was not previously made available by the incumbent.[688] Bell Atlantic/GTE will make the interconnection arrangement or network element available on the same terms and conditions as the incumbent, with prices and performance measures determined on a state-specific basis.

301. Second, where it is feasible given technical limitations, Bell Atlantic/GTE will make available to any requesting telecommunications carrier in any of its in-region states any interconnection arrangement or UNE in any other of its in-region states, that was negotiated voluntarily subsequent to the merger closing date by a Bell Atlantic/GTE incumbent LEC, subject to state-specific pricing and performance measures. In addition, Bell Atlantic/GTE will make the interconnection arrangements or UNEs available on the same terms and conditions as those in the underlying agreement, provided that the interconnection arrangements or UNEs will not be available beyond the last date that they are available in the underlying agreement, and that the requesting carrier accepts all reasonably related terms and conditions as determined in part by the nature of the corresponding compromises between the parties to the underlying agreement.[689]

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[687] We decline IURC request that competing carriers in the Bell Atlantic/GTE region be able to obtain interconnection agreements and UNEs that Bell Atlantic or GTE secured as an out-of-region competitive LEC prior to the merger closing date. *But see* IURC Mar. 1, 2000 Comments at 15-16. Given the unique facts and circumstances of the instant merger, we believe that the post-merger restriction is reasonable. Furthermore, as we stated in the *SBC/Ameritech Order*, the merged entity, "bearing in mind its commitment to implement best practices, will be on notice as to which systems and procedures could become uniform across its region." 14 FCC Rcd at 14914, para. 492.

[688] To assist competitive LECs in exercising their options, each Bell Atlantic/GTE out-of-territory affiliate will post on the Internet all of its relevant interconnection agreements. We agree with the Applicants, however, that these conditions need not be expanded to encompass Internet posting of in-region interconnection agreements. *But see* NEXTLINK Mar. 16, 2000 Reply at 12; CoreComm Mar. 1, 2000 Comments at 47-48 (requesting that the conditions require Bell Atlantic/GTE to publish on Bell Atlantic/GTE websites all effective Bell Atlantic and GTE interconnection agreements and amendments within one month after the merger closing, and detailing other associated requirements). As the Applicants assert, interconnection agreements are available publicly in each state in which they are effective, and no commenter has claimed that it has any difficulty in obtaining access to such agreements. *See* Bell Atlantic/GTE Response to Conditions Comments at 25. *See also* 47 U.S.C. § 252(h) (providing for Internet posting of in-region interconnection agreements by incumbent LECs).

[689] Several commenters take issue with this proviso requiring competitive LECs to accept "all reasonably related terms and conditions" of the underlying agreement. The crux of their concern is that this provision will encourage Bell Atlantic/GTE to attach extraneous terms and conditions to requested interconnection arrangements or network elements, under the guise of Bell Atlantic/GTE deeming such terms and conditions "reasonably related." The inclusion of such "poison pills," these commenters assert, then will deter competitors from exercising their rights under the most-favored nation commitments, or will force competitors to undergo the substantial costs and delays of going to arbitration to have such extraneous terms and conditions removed. *See* NEXTLINK Mar. 16, 2000 Reply at 11-12; Advanced Telecom Mar. 1, 2000 Comments at 4-5; AT&T Mar. 1, 2000 Opposition at 32; MCI WorldCom Mar. 1, 2000 Supplemental Comments at 15. In response to these comments, a footnote has been added to the Conditions, clarifying that this proviso is to be read in the context of the *Local Competition Order*, 11 FCC Rcd at 16137-42, paras. 1309-23. *See* Conditions at para. 32. Specifically, the *Local Competition Order* stipulates that in order to prevent discrimination, terms and conditions that an incumbent LEC seeks to require a competitive LEC to accept must be "legitimately related to the purchase of the individual [interconnection arrangement or network] element being sought. By contrast, incumbent LECs may not require . . . agreement to terms and conditions relating to other interconnection, services, or elements in the approved agreement." 11 FCC Rcd at (continued....)

When a carrier selects an interconnection arrangement or network element for an in-region state in which no rate for a comparable arrangement or element has been established, Bell Atlantic/GTE will make the arrangement or element available at the rates in the originating state on an interim basis until the requisite rates are developed. Disputes regarding the availability of an interconnection arrangement or unbundled element will be resolved through negotiation between the parties or by the relevant state commission pursuant to section 252.

302. The Applicants revised their original proposal to allow that the most-favored nation commitments encompass in-region arbitrated agreements, provisions, and UNEs.[690] Specifically, where a competing carrier seeks to adopt in an in-region Bell Atlantic/GTE service area any agreements, provisions or UNEs that resulted from an arbitration arising from the Bell Atlantic/GTE service area in another in-region state after the merger closing date,[691] either Bell Atlantic/GTE or the competing carrier may submit the arbitrated agreements, provisions, or UNEs to immediate arbitration in the "importing" state without waiting for the statutory negotiation period of 135 days to expire,[692] where the "importing" state consents to conducting arbitration immediately.

303. This approach towards arbitrated agreements, provisions, and UNEs presents several potential advantages. First, it should remove any disincentive to negotiate that the bulk of the commenters fear would be caused by most-favored nation commitments that are limited to interconnection arrangements and UNEs that are negotiated voluntarily. Second, it will expedite the ability of competing carriers to resolve contested issues in "importing" states.[693] Third, it

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16139, para. 1315. We believe that this clarification, to the extent that it tracks the language of the *Local Competition Order*, disposes of the matter.

[690] *See, e.g.*, Bell Atlantic/GTE Mar. 14, 2000 *Ex Parte* Letter at 2. These revisions came in response to the allegations of numerous commenters that unless arbitrated agreements are included in this condition, the Applicants will have an incentive to be recalcitrant in negotiations, in order to prevent extension of interconnection arrangements and UNEs that Bell Atlantic/GTE perceives as unfavorable from one in-region state to another. *See* NEXTLINK Mar. 16, 2000 Reply at 11; Advanced Telecom Mar. 1, 2000 Comments at 3; AT&T Mar. 1, 2000 Opposition at 30-33; BlueStar et al. Mar. 1, 2000 Comments at 10; CompTel Mar. 1, 2000 Comments at 7; CoreComm Mar. 1, 2000 Comments at 26-27, 46-47; Covad Mar. 1, 2000 Comments at 17; IURC Mar. 1, 2000 Comments at 15; MCI WorldCom Mar. 1, 2000 Supplemental Comments at 14.

[691] We observe that nothing in the conditions precludes IURC's argument that carriers seeking to compete in Bell Atlantic/GTE's incumbent service area should have made available to them interconnection arrangements and UNEs resulting from an arbitration involving Bell Atlantic/GTE, as a competitive LEC outside of its incumbent service area, after the merger closing date. *See* IURC Mar. 1, 2000 Comments at 15. In fact, SBC/Ameritech's original out-of-region most-favored nation commitments would have *limited* the out-of-territory arrangements available to in-region competitors to agreements obtained through arbitration initiated by SBC/Ameritech. Though SBC/Ameritech subsequently removed that limitation, it did not preclude making out-of-region arbitrated agreements available to in-region competitors. *See SBC/Ameritech Order*, 14 FCC Rcd at 14873 n.723. We read the conditions to the instant merger the same way.

[692] *See* 47 U.S.C. § 252(b)(1).

[693] *See* Covad Mar. 1, 2000 Comments at 17-18 (expressing that the conditions should provide for a faster means than negotiation between the parties to resolve disputes).

addresses the concern that we expressed in the *SBC/Ameritech Order* that expanding the condition to encompass arbitrated arrangements without qualification could interfere with the state arbitration process under sections 251 and 252 of the Communications Act.[694] We emphasize that Bell Atlantic/GTE must act in good faith in determining whether to agree voluntarily to the importation of such arbitrated agreements, provisions, or UNEs and whether to submit such arbitrated agreements, provisions, or UNEs to immediate arbitration in the "importing" state(s).[695] Thus, Bell Atlantic/GTE may be subject to penalties, fines or forfeitures pursuant to general Commission authority if it attempted, in bad faith, to block or delay adoption in a Bell Atlantic/GTE state of any UNE, whole interconnection agreement, or interconnection agreement provisions arbitrated in any other Bell Atlantic/GTE state after the merger closing date.

304. We reject assertions by NEXTLINK and NorthPoint that the most-favored nation provisions should cover performance measures and standards.[696] Because performance measures are determined by states individually outside of the merger context, we agree with the Applicants that performance measures should not be subject to the most-favored nation provisions, both out-of-region and in-region. As the Applicants explain, many states have adopted performance measures "that are unique to the regulatory environment in that state, including the particular systems, processes and service provisioning systems already implemented in that state. The performance measures that are integral to these systems will simply have no applicability in states with different systems."[697]

305. We also reject the argument of several commenters that any in-region interconnection arrangement or UNE, regardless of whether it was made available prior or subsequent to the merger closing, should be obtainable by requesting carriers in any other in-region service area.[698] Similar to our finding in the *SBC/Ameritech Order*,[699] we find it reasonable for this condition to be implemented across the merged firm's combined region on a going-forward basis only. In this way, Bell Atlantic/GTE will be on notice as to which systems and procedures could become uniform across its region. Moreover, under the conditions to this merger, any voluntarily negotiated, in-region interconnection arrangement or UNE will be made available to requesting carriers in any other in-region service area of the particular legacy

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[694] *See SBC/Ameritech Order*, 14 FCC Rcd at 14914, para. 491. We also noted there, however, that where the merged entity has stipulated in arbitration proceedings that specific arrangements have been determined through negotiation, these arrangements will be available for "most-favored nation" treatment. *Id.*

[695] For example, Bell Atlantic/GTE generally would not require a requesting telecommunications carrier to arbitrate in the "importing" state a provision that previously was arbitrated and decided in that state.

[696] *But see* NEXTLINK Mar. 16, 2000 Reply at 12; NorthPoint Mar. 1, 2000 Comments at 12.

[697] Bell Atlantic/GTE Responses to Specific Conditions Allegations at A-13; Bell Atlantic/GTE Response to Conditions Comments at 26.

[698] *But see* NEXTLINK Mar. 16, 2000 Reply at 11; Covad Mar. 1, 2000 Comments at 17; IURC Mar. 1, 2000 Comments at 15-16; MCI WorldCom Mar. 1, 2000 Supplemental Comments at 14.

[699] 14 FCC Rcd at 14914, para. 492.

company whose interconnection arrangement or UNE is being extended. Thus, for example, interconnection agreement provisions voluntarily negotiated by Bell Atlantic's incumbent LEC in New York prior to the merger closing date will be made available to a requesting carrier seeking to compete in the Bell Atlantic/GTE service area in Maryland, which is a legacy Bell Atlantic service area.

306. *Multi-State Interconnection and/or Resale Agreements.* Negotiating a separate interconnection agreement between the same parties in multiple states can impose substantial unnecessary costs and delays on competitors and provides incumbent LECs with an incentive to game the process.[700] As we discuss above, this merger will increase the merged firm's incentive and ability to impose unnecessary negotiation costs on its competitors. To neutralize this incentive, in addition to promoting market entry and assisting telecommunications carriers that want to operate in more than one Bell Atlantic/GTE state, Bell Atlantic/GTE will offer requesting telecommunications carriers an interconnection and/or resale agreement covering multiple Bell Atlantic and/or GTE states,[701] subject to technical feasibility, state-specific pricing, and the provisions in applicable collective bargaining agreements.[702] Bell Atlantic/GTE will make a sample generic multi-state agreement available to any requesting carrier no later than 60 days after the merger closing. Carriers may elect that generic agreement for any number of Bell Atlantic/GTE states, or may negotiate a different multi-state agreement with Bell Atlantic/GTE. In addition, in conjunction with the in-region most-favored nation conditions described above, carriers that negotiate an interconnection agreement with a Bell Atlantic/GTE incumbent LEC in one state may require Bell Atlantic/GTE to sign the same agreement (exclusive of price) throughout the Bell Atlantic/GTE region.[703] We decline to require that Bell Atlantic/GTE file in each of its in-region states generic terms, such as a statement of generally available terms (SGAT),[704] that include all procompetitive offerings required by the conditions.[705] We find that

[700] *SBC/Ameritech Order*, 14 FCC Rcd at 14873, para. 389.

[701] A multi-state agreement under this condition could extend to any in-region Bell Atlantic/GTE state. Even though Bell Atlantic/GTE will offer to negotiate a multi-state interconnection agreement, the affected Bell Atlantic/GTE incumbent LECs may separately sign the agreement, which shall constitute a separate contract for section 252 purposes.

[702] The Applicants' original proposal contained language, both with respect to this condition and the most-favored nation conditions, to the effect that interconnection arrangements and UNEs may be modified to reflect "differences caused by state regulatory requirements, product definitions, network equipment, facilities, and provisioning, and collective bargaining agreements." Bell Atlantic/GTE Jan. 27, 2000 Proposed Conditions at 35-37, paras. 32-35. In response to WorldCom's objections to this language, however, *see* MCI WorldCom Mar. 1, 2000 Supplemental Comments at 15, the Applicants removed all such language, and replaced it with language clarifying that interconnection arrangements and UNEs are subject to 47 U.S.C. § 251(c) (incumbent LEC interconnection obligations), Paragraph 39 of the Conditions (commitment to continue making UNEs available until the date of a final, non-appealable judicial decision relieving incumbent LECs of UNE provision requirements), and provisions in applicable collective bargaining agreements.

[703] *See SBC/Ameritech Order*, 14 FCC Rcd at 14874, para. 389.

[704] *See* 47 U.S.C. § 252(f).

[705] *But see* IURC Mar. 1, 2000 Comments at 16-19.

such a requirement is unnecessary to achieve the procompetitive benefit of this condition and would pose unnecessary costs on Bell Atlantic/GTE.[706]

307. *Carrier-to-Carrier Promotions.* Among the conditions that we adopted in approving the merger between SBC and Ameritech were unbundled loop discounts and resale discounts designed specifically to encourage rapid development of local competition in residential and less dense areas.[707] Although the Applicants' original conditions proposal did not provide for any such carrier-to-carrier promotional discounts, in response to commenters' protests,[708] the Applicants have added these promotions to their package of conditions. We find that these promotions offset the loss of potential competition between Bell Atlantic and GTE for residential services in their regions and facilitate market entry by competitors.

308. Bell Atlantic/GTE will offer these promotions equally to all telecommunications carriers with which it has an existing interconnection and/or resale agreement in a Bell Atlantic/GTE state. Within 30 days after the merger closing, Bell Atlantic/GTE will provide each such telecommunications carrier a written offer to amend the carrier's interconnection agreement in that state to incorporate the promotions. The actual offering window for both promotions will begin 30 days after the merger closing date. For the unbundled loop discount, the offering window will run through the earliest of: (a) 24 months; (b) for the Bell Atlantic legacy service areas, the date on which Bell Atlantic/GTE is authorized to provide in-region, interLATA services in the relevant state; (c) for the GTE legacy service areas, the date on which competing carriers, in aggregate, offer service over their own facilities to at least 15 percent of incumbent LEC customer locations in the GTE legacy service areas in that state;[709] or (d) the date on which Bell Atlantic/GTE has completed 50 percent of the out-of-territory competitive entry commitments in the conditions.[710] For the resale discount, the offering window will run through the earlier of 36 months, or one month after the date on which the number of resold lines subject to the promotion in a state reaches the maximum allowable for the relevant state under the conditions. Notwithstanding these offering windows, the conditions specify the maximum number of lines per state for which Bell Atlantic/GTE must provide the promotions.[711]

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[706] Furthermore, Bell Atlantic may file state-specific SGATs for its legacy service areas. *See* 47 U.S.C. § 252(f).

[707] *See SBC/Ameritech Order*, 14 FCC Rcd at 14874-75, paras. 390-92; *SBC/Ameritech Conditions*, 14 FCC Rcd at 15015-19, paras. 45-49.

[708] *See, e.g.*, BlueStar et al. Mar. 1, 2000 Comments at 3; CoreComm Mar. 1, 2000 Comments at 3, 28-29; Covad Mar. 1, 2000 Comments at 18; IURC Mar. 1, 2000 Comments at 4, 10-11.

[709] *See Access Charge Reform,* CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14,221 (1999).

[710] These factors likewise measure the duration of the initial period for the promotional resale discount. *See infra* paras. 310-15.

[711] *See* Conditions at para. 38. In order to provide competitive LECs with advance planning information, the conditions require Bell Atlantic/GTE to provide written or electronic (*e.g.,* Internet) notice to competitive LECs when the unbundled loop and resale promotions reach 50 percent and 80 percent of a state's maximum lines. We disagree with WorldCom's contention that, due to uncertainty regarding the duration of the promotions in a specific (continued....)

Furthermore, each promotion will last 36 months from the date that the promotional loop or resold service is installed and operational, or for the duration of the period during which the loop or resold service remains in service at the same location and for the same carrier, whichever is shorter.

309. *Carrier-to-Carrier Promotions*: *Unbundled Loop Discounts*. Bell Atlantic/GTE will offer a promotional discount on the monthly recurring charges[712] for unbundled local loops used in the provision of residential local service and not used as part of a UNE platform or in any other combination with Bell Atlantic/GTE's local switching. The promotional discounts (as well as illustrative rates) are set forth in the conditions and are, on average within each state, 25 percent below the lowest applicable monthly recurring price established by the state commission. Bell Atlantic/GTE will make the promotional loop discount available equally to all telecommunications carriers that request the discount prior to expiration of the offering window or satisfaction of the line threshold limitation, and the promotion will last 36 months for each loop requested in that period, or for the duration of the period during which the loop remains in service at the same location and for the same carrier, whichever is shorter.

310. *Carrier-to-Carrier Promotions*: *Resale Discounts*. As another means of encouraging residential competition in less dense areas, Bell Atlantic/GTE will offer a promotional resale discount on Bell Atlantic/GTE's retail telecommunications services, where such services are resold to residential customers. The promotional resale discount shall be 32 percent from retail rates for an initial period, and, for the remaining period of the promotion, a rate equal to 1.1 times the standard wholesale discount rate established for that service by the state commission (*i.e.*, a discount of ten percent more than the standard wholesale discount rate). Bell Atlantic/GTE will make the promotional resale discount available equally to all telecommunications carriers that request the discount prior to expiration of the offering window or satisfaction of the line threshold limitation, and the promotion will last 36 months from the date each resold service is installed and operational, or for the duration of the period during which the resold service remains in service at the same location and for the same carrier, whichever is shorter.

311. We decline to increase the resale discount.[713] As we found in the *SBC/Ameritech*

(Continued from previous page)
state, competitive LECs cannot make reliable business plans based on the availability of a discount. *But see* WorldCom May 5, 2000 Further Supplemental Comments at 8. WorldCom cites as an example the provision allowing the unbundled loop discount promotion to end in a state upon Bell Atlantic/GTE's receipt of section 271 authority in that state. We believe that the 90 days afforded for the Commission's processing of section 271 applications provides competitive LECs with sufficient notice of the potential cessation of the unbundled loop discount in that state.

[712] We decline to require that the unbundled loop discount also apply to non-recurring charges. *But see* WorldCom May 5, 2000 Further Supplemental Comments at 7-8. We believe that the discount on recurring charges for unbundled loops is sufficient to stimulate further competitive LEC penetration into the residential local market.

[713] *But see* National ALEC Mar. 1, 2000 Comments at 6-7 (requesting a discount in the range of 50-60 percent).

Order, the 32 percent discount should facilitate competitive entry in the residential market.[714] We also do not find it necessary at this juncture to take any affirmative steps to "ensure that [Bell Atlantic/GTE] does not attempt to offset the loss in revenue resulting from . . . [the] residential resale discount by increasing other charges."[715] Any potential for such attempts does not undermine the public benefit of this condition, and we expect that state commissions will catch and suppress any such attempts in the course of their review of Bell Atlantic/GTE's cost studies.

312. We reject commenters' suggestions that we eliminate the restrictions on the availability of the carrier-to-carrier promotions. For example, commenters seek removal of the limitation that competitors receiving the promotional unbundled loop discount can only use these loops for voice services,[716] as well as the residential restriction and line limitation contained in both of the promotions.[717] Our desire to promote residential competition is consistent with Congress's intent, through enacting the 1996 Act, to spur facilities-based competition to serve residential customers.[718] Moreover, we find that the promotions' limited duration and line limitations will motivate competing carriers to enter the residential market faster to secure the benefit of the promotions, thereby accelerating the availability of competitive offerings to residential consumers.[719] Once a carrier secures the promotion, however, it is guaranteed the promotional terms for a full three-year period. Because our intent is for these promotions to ignite competition in the residential local exchange or exchange access markets in Bell Atlantic's and GTE's regions, we decline to expand this particular condition to cover loops used in the provision of advanced services.[720] Indeed, we note that competitors that choose to use an unbundled loop to provide advanced services already receive a 25 percent discount elsewhere in the conditions, through the advanced services OSS discount.[721]

313. We also reject AT&T's arguments that the carrier-to-carrier promotions are

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[714] *See SBC/Ameritech Order*, 14 FCC Rcd at 14915 n.898 (*citing Local Competition Order*, 11 FCC Rcd at 15955-56, 15963-64, paras. 910, 932-33).

[715] National ALEC Mar. 1, 2000 Comments at 7.

[716] *See* Covad May 5, 2000 Comments at 13-14; WorldCom May 5, 2000 Further Supplemental Comments at 8. Both Covad and WorldCom seek extension of the applicability of the unbundled loop discount to loops used for advanced services.

[717] *See* AT&T May 5, 2000 Comments at 5, 7 (arguing that the line limitations are unlawful); CoreComm Mar. 1, 2000 Comments at 29 (maintaining that the promotions likewise should apply to service rendered to small businesses).

[718] *See SBC/Ameritech Order*, 14 FCC Rcd at 14914-15, para. 494; (*citing* S. Conf. Rep. No. 104-230 at 148) (contemplating that the 1996 Act would promote facilities-based, "local residential competition").

[719] *See SBC/Ameritech Order*, 14 FCC Rcd at 14915, para. 494.

[720] *Id. See also* Bell Atlantic/GTE May 9, 2000 Response at 3 n.3 (*citing SBC/Ameritech Order*, 14 FCC Rcd at 14892, para. 440).

[721] *See* Conditions at para. 25.

discriminatory and therefore unlawful.[722] First, based on the manner in which Bell Atlantic/GTE will execute its obligations, we do not find that the residential and voice service restrictions transgress the Act or corresponding Commission rules.[723] Specifically, Bell Atlantic/GTE will implement the promotions by voluntarily offering to amend its interconnection agreements with telecommunications carriers to incorporate the promotional terms.[724] Moreover, Bell Atlantic/GTE will make this offer in a nondiscriminatory manner to all telecommunications carriers with which it has an interconnection and/or resale agreement in any Bell Atlantic/GTE state.

314. The 1996 Act and corresponding Commission rules give incumbent LECs and their competitors certain latitude to enter into customized contractual arrangements, subject to section 252(i)'s requirement that any negotiated arrangement must be made available to all interested carriers in the same state upon the same terms and conditions.[725] Section 252(a)(1) provides that "an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251."[726] Likewise, although section 252(e)(2)(B) requires a finding of compliance with section 251 when state commissions review arbitrated agreements, there is no corresponding requirement with respect to negotiated agreements.[727] We note, however, that as AT&T points out, pursuant to section 252(e)(2)(A)(i), a

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[722] *See* AT&T May 5, 2000 Comments at 3, 4-7.

[723] *See* 47 U.S.C. § 251(c)(3), (4)(B) (nondiscrimination requirements); 47 C.F.R. § 51.313(a) (requiring nondiscriminatory access to network elements); 47 C.F.R. § 51.603(a) (requiring nondiscriminatory resale); 47 C.F.R. § 51.503(c) (providing that an incumbent's rates shall not vary on the "basis of the class of customers served by the requesting carrier, or the type of services that the requesting carrier purchasing such elements uses them to provide"). *See also SBC/Ameritech Order*, 14 FCC Rcd at 14915, para. 495.

[724] *See* 47 U.S.C. § 252(a)(1). With Bell Atlantic/GTE voluntarily offering to amend interconnection agreements, states will not be in the position of putting the discount into arbitrated agreements. Of course, the amended agreements still will be subject to state commission approval of voluntarily negotiated agreements pursuant to 47 U.S.C. § 252(e). In this regard, we reject the proposal of the Allegiance Joint Commenters that the promotional discounts be made automatic, without amending interconnection agreements. *See* Allegiance May 5, 2000 Joint Comments at 6-7. As the Applicants aptly respond, section 252 requires inter-carrier arrangements for UNEs and resale to be embodied in interconnection agreements. *See* Bell Atlantic/GTE Responses to Specific Conditions Allegations at A-14. *See also, e.g.*, 47 U.S.C. § 252(e)(1), (h), (i).

[725] *See SBC/Ameritech Order*, 14 FCC Rcd at 14915, para. 496.

[726] 47 U.S.C. § 252(a)(1). *See Local Competition Order*, 11 FCC Rcd at 15528, paras. 54, 58 (stating that "parties that voluntarily negotiate agreements need not comply with the requirements we establish under sections 251(b) and (c), including any pricing rules we adopt").

[727] 47 U.S.C. § 252(e)(2). The Supreme Court recognized this distinction in *AT&T Corp. v. Iowa Utilities Board*, stating: "When an entrant seeks access through [resale, leasing of unbundled network elements, or interconnection], the incumbent can negotiate an agreement without regard to the duties it would otherwise have under §251(b) or (c). But if private negotiation fails, either party can petition the state commission that regulates local phone service to arbitrate open issues, which arbitration is subject to §251 and the FCC regulations promulgated thereunder." *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 372-73 (1999) (footnote and citation omitted).

state commission may reject a negotiated agreement if it finds that the agreement "discriminates against a telecommunications carrier not a party to the agreement."[728] Thus, the commission in each state in which Bell Atlantic/GTE will offer the promotions must make its own assessment of whether the promotions are discriminatory.

315. AT&T also contends[729] that the line limitation on the number of discounted loops and resale offerings that will be made available to competitive LECs would violate the "pick and choose" rule of section 252(i), as well as the nondiscrimination requirements of section 251(c)(3) and 252(d)(1).[730] We note that, under the specific terms of the merger conditions, these promotions are being offered to competitors in a nondiscriminatory fashion. Specifically, in each of its states, Bell Atlantic/GTE will offer the promotion simultaneously to all telecommunications carriers that have an existing interconnection and/or resale agreement with Bell Atlantic and/or GTE. This should ensure that all competitive LECs operating in Bell Atlantic/GTE's region will be afforded an equal opportunity to participate in the promotions. Moreover, carriers that begin operating in Bell Atlantic/GTE's region, or decide to participate in the promotions, after this initial offer period will have the opportunity to participate in the offerings, and Bell Atlantic/GTE will respond to inquiries by all carriers within 10 business days. Finally, Bell Atlantic/GTE will notify all carriers operating in the state when 50 percent and 80 percent of the maximum lines in that state are reached.

316. *Offering of UNEs.* In order to reduce uncertainty to competing carriers from litigation that may arise in response to our orders in the UNE Remand and Line Sharing proceedings, from now until the date on which the Commission's orders in those proceedings, and any subsequent proceedings, become final and non-appealable, Bell Atlantic and GTE will continue to make available to telecommunications carriers, in accordance with those orders, each UNE and combination of UNEs that is required under those orders, until the date of any final and non-appealable judicial decision that determines that Bell Atlantic/GTE is not required to provide the UNE or combination of UNEs in all or a portion of its operating territory. This condition only would have practical effect in the event that our rules adopted in the UNE Remand and Line Sharing proceedings are stayed or vacated. Compliance with this condition includes pricing these UNEs at cost-based rates in accordance with the forward looking cost methodology first articulated by the Commission in the *Local Competition Order*, until the date of any final and non-appealable judicial decision that determines that Bell Atlantic/GTE is not required to provide such UNEs at cost-based rates.

317. *Alternative Dispute Resolution Through Mediation.* As a means of streamlining and expediting resolution of carrier-to-carrier disputes, Bell Atlantic/GTE will offer telecommunications carriers, subject to the appropriate state commission's approval, an option of

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[728] *See* 47 U.S.C. § 252(e)(2)(A)(i); AT&T May 5, 2000 Comments at 7 n.8.

[729] AT&T May 5, 2000 Comments at 5, 7.

[730] *See* 47 C.F.R. § 51.809(a) (implementing pick and choose rule of section 252(i)). *See also* 47 C.F.R. §§ 51.313(a), 51.603(a). As explained above, the nondiscrimination requirements of section 251(c) and corresponding Commission rules do not apply to voluntarily negotiated agreements.

resolving interconnection agreement disputes through an alternative dispute resolution mediation process that may be state-supervised. This mediation process supplements, rather than supersedes, any other options at the carrier's disposal for addressing interconnection disputes with Bell Atlantic or GTE, including negotiated dispute resolution mechanisms. We note that no state or competitive LEC is required to adopt or participate in this process.[731] Furthermore, nothing in this condition in any way limits the ability of carriers to pursue enforcement remedies, including informal mediation, at the Commission pursuant to section 208.[732]

318. *Access to Cabling in Multi-Unit Properties.* In order to provide information regarding possible options for additional competition in the provision of local service to multi-unit properties, Bell Atlantic/GTE will conduct a trial that will provide telecommunications carriers with access at a single point of interconnection to cabling owned or controlled by Bell Atlantic/GTE in multi-tenant residential and business properties.[733] As a separate commitment, Bell Atlantic/GTE will design, install and provide all new cabling owned or controlled by Bell Atlantic/GTE in a manner so that it can be accessed by any telecommunications carrier at a single point of interconnection, located at the minimum point of entry.[734] We decline to implement Covad's suggestion that Bell Atlantic/GTE implement a trial scheme identical to the one that we adopted in approving the merger between SBC and Ameritech.[735] The Applicants represent that Bell Atlantic initiated a trial earlier this year in New York City allowing a competitive LEC to install cross-connects to house and riser cable, and that it has an existing tariffed service in New York and a tariff pending in Massachusetts that give competitive LECs access to such cabling.[736] Moreover, as specified by the condition,[737] Bell Atlantic/GTE will take the needed steps elsewhere to expand access at single points of interconnection to cabling owned

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[731] We also note, on the other hand, that states may choose to be involved in multi-state mediations of similar or common issues, though such participation, as with any state participation under this condition, is completely voluntary. *See SBC/Ameritech Order*, 14 FCC Rcd at 14917, para. 499.

[732] *Cf.* CoreComm Mar. 1, 2000 Comments at 49-50 (Commission should establish an informal staff mediation process in order to facilitate resolution of interconnection negotiation disputes).

[733] As with the *SBC/Ameritech Conditions*, the Chief of the Common Carrier Bureau will resolve any disputes that may arise regarding the trial. *See SBC/Ameritech Order*, 14 FCC Rcd at 14877 n.743; *SBC/Ameritech Conditions*, 14 FCC Rcd at 15024-25, para. 57.

[734] This commitment also encompasses new cables installed or controlled by Bell Atlantic/GTE in a campus of garden apartment dwelling units. There may be, however, multiple points of entry where a property owner requests diversity.

[735] *But see* Covad Mar. 1, 2000 Comments at 19. *Compare SBC/Ameritech Conditions*, 14 FCC Rcd at 15024-25, para. 57 (SBC/Ameritech to conduct trials in five "large cities" and complete them within two years after the merger closing) *with* Conditions at para. 41.

[736] *See* Bell Atlantic/GTE Response to Conditions Comments at 26. The Applicants also submitted relevant portions of the publicly available New York tariff to Commission staff, and these submissions were placed in the Commission's record for this proceeding on June 12, 2000.

[737] Conditions at para. 41.

or controlled by Bell Atlantic/GTE in multi-tenant residential and business properties.[738] We believe that the Applicants' commitment to provide carriers with access to incumbent LEC owned or controlled cabling behind a single point of interconnection for multi-unit properties and campuses of garden apartment dwellings will further significantly competitors' access to cabling.[739] We also note that, in addition to these conditions, Bell Atlantic/GTE must comply with the rules that we adopted in the *UNE Remand Order* regarding competitive LEC access to cabling at a single point of interconnection, located at the minimum point of entry.[740]

3. Fostering Out-of-Territory Competition

319. *Out-of-Territory Competitive Entry.* As a condition of this merger, between the merger closing date and the end of the 36th month thereafter, the combined firm will spend at least $500 million to provide competitive local service and associated services outside of the Bell Atlantic and GTE legacy service areas. Specifically, "competitive local service" is defined to include traditional local telecommunications services that compete with like services offered by incumbent LECs, provision of advanced services to the mass market, and resale. Additional expenditures that otherwise may count towards fulfillment of the out-of-region commitment include those devoted towards provision of "other telecommunications services" or information services that are offered jointly with competitive local service, as well as investments in, or contributions to, ventures that provide competitive local service activity in out-of-region markets. Bell Atlantic/GTE must devote at least 50 percent of the out-of-region expenditure commitment to facilities-based competitive service, and it may allot the remaining portion to acquire customers for competitive local service in those out-of-region markets. Notwithstanding the expenditures, the merged firm will be deemed to have satisfied the out-of-region commitment if it provides service, during the 36-month period described above, over at least 250,000 customer lines that are used to provide competitive local service in out-of-region markets.[741]

320. Bell Atlantic/GTE will be subject to voluntary payments to the U.S. Treasury in the amount of 150 percent of any shortfall in its out-of-region expenditure. Similarly, the merged entity will pay 150 percent of any amount by which it falls short of devoting $250 million to facilities-based service, though this payment for inadequate facilities-based service expenditures will be offset by half of the amount of any payment for a general shortfall in its out-of-region expenditure. Bell Atlantic/GTE would therefore be obligated to pay $750 million for missing all of its out-of-region entry requirements. In addition, the Applicants have committed

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[738] *See* Bell Atlantic/GTE Response to Conditions Comments at 26-27.

[739] *See SBC/Ameritech Order*, 14 FCC Rcd at 14917, para. 500.

[740] *See, e.g., UNE Remand Order* at paras. 168-70, 226.

[741] Customer lines are defined as including telephone access lines, xDSL or other lines used to provide Advanced Services, cable lines, or "other lines of communications used to provide Competitive Local Service." A line subject to line sharing will be considered one customer line even if Bell Atlantic/GTE, its affiliate, or the venture to which Bell Atlantic/GTE has contributed is providing both the voice and advanced services. Where Bell Atlantic/GTE counts cable or fixed wireless services towards satisfaction of the out-of-region commitment, each subscriber will be deemed to have one customer line.